(16,645.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 146.

THE REMINGTON PAPER COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN W. WATSON, FRANK H. POPE, AND THE LOUISIANA PRINTING AND PUBLISHING COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 27, 1898.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

REMINGTON PAPER COMPANY, Plaintiff in Error,
versus
JOHN W. WATSON ET AL., Defendants in Error. } No. 12287.

Messrs. Edwin T. Merrick and Albert Voorhies, for plaintiff in error,
Henry L. Garland, Esquire, for defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty (30) days from the ninth (9th) day of July, A. D. 1897.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition and Action of Nullity of the Remington Paper Company vs. John W. Watson et al.

Filed June 9th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Merrick and Merrick, att'ys for plaintiff and appellant.
Henry L. Garland and W. K. Horn, att'ys for defendants and appellees.

To the hon. the judges of the district court for the parish of Orleans:

The petition of the Remington Paper Company, a corporation created under the laws of New York and domiciled in said State, respectfully represents that, having a just and valid claim against the Louisiana Printing and Publishing Company, Limited, amounting to thirty-eight hundred and sixty-three .55 dollars for paper furnished said company, and on such paper as remained on hand having the vendor's privilege, and having a right to sue in the courts of the United States for the eastern district of Louisiana, being cause No. 12197, and there being adequate grounds therefor, sued out of said circuit court, in due form and on sufficient bond,

writs of sequestration and attachment, and on the 29th day of May 1893, the marshal of the United States seized under said writs five rolls of the paper sold by petitioner to said defendant, and
2 under the writ of attachment a printing press, safe and other office furniture, presses, books & accounts, and other articles as are usually kept in a newspaper establishment, took the same into the custody of the said marshal, where they now are.

This petitioner further represents that service was made of the petition, citation, attachment, and writ of sequestration upon James D. Hill, president of said Louisiana Printing & Publishing Company, and seizure made the 29th day of May, 1893. Under the laws and Constitution of the United States your petitioner was and is entitled to prosecute said suit to effect without let or hindrance on the part of any other person. Nevertheless John W. Watson, now made a defendant to this suit in violation of petitioner's said rights, falsely styling himself a receiver of the said Louisiana Printing & Publishing Company and falsely stating that he was in possession of said property attached and sequestered in virtue of an appointment as such receiver by the hon. the judge of the division A of your honorable court, filed on the thirtieth day of May inst., in said circuit court, a motion to have the said attachment and sequestration set aside, and, the said motion coming on for trial, *and* the said circuit court, without passing upon the force of the proceedings in your hon. court, on the 6th day of May ordered that the marshal restore the property seized in this cause under the writs of attachment and sequestration to said John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court, which appointed Watson, or from the appellate court to hold same under said writs.

Petitioner further represents that the aforesaid order obtained under the said motion will have the effect of preventing petitioner from obtaining judgment *on* his said demand against said
3 defendant company can be rendered in the case, and this cannot be done without occasioning great damage and loss to the plaintiff in paying the costs of said seizures and the custody of the goods seized—say in the sum of thirty-eight hundred and sixty-three .55 dollars—and petitioner alleges that said Watson is liable for his illegal conduct to petitioner in the sum of thirty-eight hundred and sixty-three .55 dollars.

Petitioner further represents that said Watson was without any right to stand in the way of the collection of a just debt against said defendant for the following reason:

First. At the date of petitioner's seizure under said writ of attachment, the said 29th day of May, 1893, he had not given bond, nor had he complied with any order of court in the said *ex parte* proceedings, nor had such proceedings been had as to perfect said order, or to give said Watson any right to control the property of said defendant, or to prevent any suit from being brought or any court from subjecting the property of said defendant by due course of law to the payments of its debts, and the conduct of the said Watson, Frank H. Pope, and those confederating with them in attempting

to screen the property from payment of debts was collusive and a constructive fraud upon petitioner and a violation of its rights under the laws and Constitution of United States of America.

Second. The said pretended order under which said John W. Watson claims pretended authority, dated 17th May, 1893, was absolutely null and void as against petitioner and the creditors of said Louisiana Printing & Publishing Company, Limited, and conferred no authority on said Watson for the reason the same was made upon the collusive petition of Frank H. Pope without citation to any one, without oath or affidavit or any proof, and without any contest
4 *atiolitis*, and the said incohate and pretended order on said Pope's petition was obtained the same day said Pope's collusive petition was filed and in which no citation was prayed for.

Third. The officers of the Louisiana Printing & Publishing Company, Limited, were incapable by law of withdrawing from their offices so as to delay or hinder the creditors of said corporation from the pursuit of creditors, and the said corporation does not cease to exist until regular proceedings have been taken against the numerous officers and stockholders of said corporation under the charter or otherwise.

Fourth.—The attempt to bolster up the illegal *ex parte* proceedings by so-called intervention on the part of the attorney general will not cure the nullity of said *ex parte* proceeding of said Pope and said Watson, and moreover said so-called intervention, which contains no affirmative allegations on behalf of the State, but purports to recite Pope's allegations, is not a mode of proceeding authorized by law, and the State is without right to intrude itself in this manner into the controversies of private persons, and to demand forfeitures in any other manner than that provided by law, and the State, through its attorney general, was without authority to join said Pope in his prayer in said *ex parte* petition, and without due process of law pray that a receiver be appointed, and said *ex parte* proceeding is null and void as against creditors not parties in pursuit of their rights.

Petitioner further represents that no citation was issued until the 29th day of May, 1893, the day the marshal served his writs on said property, and said citations not prayed for were not relevant to the proceeding- and could not give validity to the illegal proceedings which had preceded them.

Petitioner further represents that in order to conform to the
5 order of the United States circuit court it does not deem it important to refer to any of the other collusive proceeding- in said case of Frank H. Pope *vs.* The Louisiana — & Publishing Company, Limited, No. 39100, but to avoid prolixity reserves the right to refer to all the proceedings in said cause, if needed, as fully as if specially set out in this petition, and to make further parties.

Wherefore petitioner prays that said John W. Watson, calling himself receiver; Frank H. Pope, and the Louisiana Printing & Publishing Company, Limited, be duly cited to appear and answer this petition; that said *ex parte* order, purporting to appoint said John

W. Watson receiver, be declared, as against your petitioner, null and void and — no effect, and the same is ineffectual as a bar to said attachment or sequestration or other proceedings on the part of the petitioners in the said court of the United States, and that said John W. Watson and said Frank H. Pope be condemned, as *in solido* or otherwise, to pay your petitioner the sum of thirty-eight hundred and sixty-three .55 dollars, damages caused petitioner in the United States circuit court for the eastern district of Louisiana, and the marshal's seizure thereunder, and that petitioner's right to prevent its suit against the said Louisiana Printing and Publishing Company, Limited, in the courts of the United States, and for such other and general relief as the nature of the case and justice may require.

(Signed) MERRICK & MERRICK,
Att'ys for Petitioner.

Exceptions on Behalf of Louisiana Printing & Publishing Co. to Petition of Remington Paper Co.

Filed June 12th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

6 Now comes John W. Watson, receiver, and appearing herein for and on behalf of the Louisiana Printing & Publishing Co., Ltd., over which he was appointed receiver, and reserving full right to answer the petition herein of the Remington Paper Co., for exception to said petition says:

1. That said petition discloses no cause of action.
2. That said action is premature, even if it could be maintained at all, which is denied.
3. That proper & necessary parties have not been made hereto.
4. That the question of the validity of the attachment & sequestration sued out in the Federal court is either settled by the decision of the U. S. circuit court adverse to the pretentions of the Remington Paper Co. in a litigation between this receiver & said Remington Paper — involving the validity of the seizure thereunder, and, if so, said decision is now *res judicata* upon the question of said attachment & sequestration.

And in the alternative exception says that if said ruling is not *res judicata* upon the validity *vel non* of said attachment & sequestration are still pending undetermined between said Remington Paper Co. — your exceptor in a court of concurrent jurisdiction, and in that event exceptor pleads the plea of *lis pendens* and prays that all the foregoing exceptions be sustained and the action herein of the Remington Paper Co. be dismissed at its costs.

(Signed) By his attorney, H. L. GARLAND, JR.

Exception by Frank H. Pope to Petition of Remington Paper Co.

Filed June 12th, 1893.

7 Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Now comes Frank H. Pope, made defendant in the action of the Remington Paper Co. herein, &, reserving full right to answer the petition of said Remington Paper Co., for exception thereto says:

1. That said petition discloses no cause of action against exceptor.

2. That if any such action on this petition could lie against him, said action is now premature.

3. That proper and necessary parties have not been made herein.

4. That the question of the validity of the attachment & sequestration has already been settled adversely to the pretentions of said Remington Paper Co. and affords no grounds of complaint against exceptor, who was no party to the proceedings in the U. S. circuit court in which said attachment and sequestration were set aside until the appointment of the receiver herein should be annulled by this court.

Wherefore exceptor, reserving the right to answer should these exceptions be overruled, prays that said — be maintained and the action of said Remington Paper Co. be dismissed at its costs.

(Signed) By his attorney, H. L. GARLAND, JR.

Exceptions of the Receiver Watson to the Petition of the Remington Paper Company.

Filed June 12th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

8 Now comes John W. Watson, receiver, made defendant herein, in his individual capacity, and, reserving full right to answer the petition of the Remington Paper Co., for exception to the said petition says:

1. That said petition discloses no cause of action against defendant.

2. That if any such action as this petition discloses could lie against him, said action is now premature.

3. That as the legal representative of the Louisiana Printing and

Publishing —, Ltd., with full authority to represent it in all courts, he now files the following pleas:

(*a.*) That the question of the validity of the attachment and sequestration herein sued out by the Remington Paper Co., Ltd., has been settled adversely to the pretentions and claims of said Remington Paper Co., Ltd., by a judgment of a court of concurrent jurisdiction between your exceptor and said Remington Paper Co., Limited, in a litigation involving the said attachment and sequestration, in which said exceptor and said Remington Paper Co. appeared in exactly the same capacities as they do in this suit.

Wherefore exceptor interposes now the plea of *res judicata* in bar of petition of said Remington Paper Co.

(*b.*) But in the event that this court should hold the foregoing plea bad, then exceptor pleads the plea of *lis pendens*, the validity of said attachment and sequestration, and the existence of any debt due to said Remington Paper Co. being now the subject of a litigation between the same parties, to wit, your exceptor and said Remington Paper Co., in a court of concurrent jurisdiction in this State.

9 (*3.*) That there are necessary and proper parties to this action on behalf of the Remington Paper Co. who are not made parties hereto, but should be before the court as having substantial interests in the subject-matter of this litigation and as parties to the original action, resulting in the judgment whose annullment is sought.

Wherefore exceptor, reserving the right to file an answer hereto should these exceptions & pleas be overruled, prays that said exceptions and pleas be sustained and the action of the Remington Paper Co. be dismissed at its costs.

(Signed) By his attorney, HENRY L. GARLAND.

Amendments to Petition of Remington Paper Company.

Filed July 1, 1893.

Civil District Court, Division A.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

The said Remington Paper Company, leave of the court being first had and obtained, comes and amends its petition filed in this case in the following particulars, viz:

1st. At the end of the 17th line, on the first page of the said petition, after the words "none are," by adding thereto the words "which said things seized under said writs are of sufficient value to pay and satisfy this petitioner's said debt."

2nd. At the end of the 25th line, on the second page of the petition, after the words "and sixty-three 55 dollars," the following words, viz., "the aforesaid order or decree under which said Watson

claims to deprive your petitioner of the benefit of his said
10 seizures and suit in said circuit court of the United States, No. 12197, is the order made on the 17th day of May, 1893, by this hon. court, indorsed and attached to a petition of Frank H. Pope, filed the same day against the Louisiana Printing and Publishing Co., Limited, No. 39100, of this honorable court, wherein it was, among other things, ordered that said John W. Watson be appointed receiver to the Louisiana Printing and Publishing Company, Limited, with full power to liquidate and wind up its affairs, and directed to take the proper legal oath and otherwise properly qualify. Said petition and order are hereby referred to for greater certainty, and it is alleged hereby that said Pope consented to and aided and abetted said Watson in the unwarranted use of said order of 17th day of May, as charged in said petition."

3rd. And commencing at the fifth line from the end of the petition in the prayer thereof, after the word "thereunder," by correcting the clerical error therein, so that said conclusion of the prayer shall read as follows: "And that said petitioner's right to prosecute its suit, commenced on the 29th day of May, 1893, against the said Louisiana Printing and Publishing Company, Limited, in the court of the United States, be declared unrestrained by said *ex parte* order at the suit of Frank H. Pope, and for such other and further relief as the nature of the case and justice may require."

(Signed) MERRICK & MERRICK,
Att'ys to said Remington Paper Company.

Order.

It is ordered that the foregoing amendments to the said petition of the Remington Paper Company be filed as a part thereof and served on the defendants.

New Orleans, July 1, 1893.

(Signed) T. C. W. ELLIS, *Judge.*

11 *Exception.*

Filed July 8th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER CO., Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Exception of the Remington Printing Company to the suit of John W. Watson against the said Remington Paper Company and Thomas B. Lyons, bearing the same number, 39100, wherein said Watson styles himself receiver and special mandatory of certain stockholders of the said Louisiana Printing and Publishing Company, Limited.

The said Remington Paper Company comes, by Merrick & Merrick, its attorneys, on whom service of process has been made in

said suit against it and said Lyons, and for exception says that it denies specially that said Jno. W. Watson has been appointed in a legal manner and in any suit with the proper parties a receiver of said Louisiana Printing and Publishing Company, with power to stand in judgment, to prosecute suits on behalf of said company against this defendant, a large creditor of said company, seeking to recover its debts against said Louisiana Printing and Publishing Company, and having instituted a suit with demands in sequestration and attachment levied, say, 29th day of May, 1893, being No. 12167, in the circuit court of the United States for the eastern district of Louisiana, on a debt of $3,863.55 against said last-mentioned company, and alleges that the said Watson, under his said pretended title of receiver, has at various times, say on the 30th day of May, June 1st, June 20th of present year and at other times, intruded himself unto said suit on simple motions and endeavored, under cover of his said pretended capacity of receiver, to procure and take from the U. S. marshal the goods sequestrated and
12 attached and held by this exceptor's sequestration and attachment at its great cost, and otherwise to hinder this exception in the prosecution of its just demand against said Louisiana Printing and Publishing Company, and this defendant denies that said pretended stockholders ever conferred on said Watson the capacity and power he has alleged in his said petition to represent said corporation, and denies that a meeting of the stockholders of said corporation was ever convened in a corporate meeting in accordance with the eighth article of the charter of said company, and especially denies that said stockholders have conferred or could have conferred any capacity on said Watson to stand in judgment for said company.

Wherefore this defendant prays that this exception be maintained and that said Watson be declared to be without said alleged capacity to prosecute this suit and further to continue hindering and vexing this defendant in the collection of his debt against said Louisiana Printing and Publishing Company, Limited, under the pretense that he is the receiver of said company and that he be decreed to pay the costs *second.*

And in the event the foregoing exception to the pretended capacity of said Watson be overruled, and not otherwise, this exception further excepts and says that the said petition against said Remington Paper Company and Thos. B. Lyons discloses no cause of action against this defendant.

Wherefore it prays that said suit be dismissed and for its costs.

(Signed) By MERRICK & MERRICK,
Att'ys for the Remington Paper Co.

Answer of Pope to Remington Paper Co. Suit.

Filed May 4th, 1894.

13 Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Now comes Frank H. Pope, defendant in action of Remington Paper Co., and for answer thereto denies all and singular the allegations thereof.

(Signed) By his attorney, H. L. GARLAND, JR.

Answer of J. W. Watson, Receiver, and Reconventional Demand.

Filed May 4th, 1894.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Now into court comes defendant John W. Watson, by his undersigned counsel, and, for answer to the petition of the Remington Paper Co. filed herein, denies all and singular the allegations therein contained except as hereinafter specially admitted.

Defendant admits that he was duly appointed receiver to the Louisiana Printing and Publishing Co., Limited, and avers that said appointment was and is perfectly valid and lawful; that defendant accepted said appointment and *only* qualified as such receiver before acting as such; that defendant denies that there was any fraud, collusion, or conspiracy between him and any person or persons whatever in the matter of his appointment as receiver herein, nor has he any knowledge or even suspicion of any improper acts on the part of any officers of defendant company, but, on the contrary, defendant alleges that to the best of his knowledge and belief all the officers of said Louisiana Printing and Publishing Co.,
14 Ltd., were actuated by just and honest motives—that is to,—to realize as much as possible and as promptly as possible the full value of all the property and assets of the insolvent corporation for the benefit of all the creditors thereof, as their status might be determined by this honorable court.

Defendant denies any and all imputations upon the purity and integrity of his motives contained in the plaintiff's petition.

And now defendant receiver, assuming the attitude of plaintiff in reconvention, alleges that the Remington Paper Co. is a non-resident corporation; that by its unlawful and unwarranted seizure of the property of said Louisiana Printing and Publishing Co., Limited,

which seizure has been released, said Remington Paper Co. has damaged the creditors of said Louisiana Printing and Publishing Co., Limited, for whose benefit *ut universi* this reconventional demand is now prosecuted; that said damages are itemized as follows:

Attorney's fees for dissolving the attachment levied in the U. S. circuit court	$600.00
For rent of Natchez Street premises from Oct. 1, 1893, to Oct. 1, 1894, at $50.00 per month	600.00
For the difference between the amounts realized for the assets of defendant company, to wit, $3,090.85 and ⅔ of the appraisement of said property, as per inventory filed, to wit, $5,738.00; which said difference amounts to	2,647.15
Making the total loss to defendant company — reason of said attachment in the sum of	$3,847.15

For which sum defendant is entitled to judgment on his reconventional demand.

Wherefore said John W. Watson prays that said plaintiff's
15 petition be dismissed; that he be quieted in his position as receiver; that his appointment be notified and confirmed as prayed for by said La. Printing and Publishing Company and by a large majority of its stockholders and its board of directors, and that, as the representative of the creditors of said Co., he have judgment on his reconventional demand against plaintiff in the sum of $3,847.15 and all costs of this suit.

(Signed) By his att'y, H. L. GARLAND, Jr.

Amended Petition of the Remington Paper Company.

Filed May 24th, 1894.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

To the honorable the civil district court for the parish of Orleans:

The Remington Paper Company in this its case against John W. Watson, Frank H. Pope, and Louisiana Printing and Publishing Company, Limited, bearing the number 39100 on the docket of your hon. court, leave of the court being first had and obtained, comes and amends its petition more fully by inserting and alleging therein the following words and figures immediately preceding the word "wherefore," at the commencement of the prayer of the original petition, viz:

And petitioner specially and specifically avers that said *ex parte* order of this court, dated the 17th day of May, 1893, purporting to appoint John W. Watson receiver of the Louisiana Printing and

Publishing Company, Limited, was obtained in violation of the fifth and fourteenth amendments to the Constitution of the United
16 States, in this, that said decree was obtained without due process of law, it being *ex parte* and without affidavits, bond, or proof, as more at large alleged in the original petition, and the said unconstitutional and void order and decree is set up and alleged by the defendants as a bar and a defence to prevent your petitioner from recovering and having its said just and valid debt from its said debtor, the said Louisiana Printing and Publishing Company, Limited, and thus depriving petitioner of its claim duly secured by due and legal process of law on the property of its said debtor and seized under said writs from said circuit court of the United States, and said defendants seek through said void *ex parte* order of 17th day of May, 1893, to effect the transfer and — of the possession and property of said Louisiana Printing and Publishing Company under the seizure of petitioner under its writs to said John W. Watson, thereby screening the same from ordinary and legal pursuits of creditors in the modes pointed — by law, in violation of the fifth and said 14th amendments of the Constitution of the United States.

Petitioner renews the prayers heretofore made and as amended, and for general relief.

(Signed) By MERRICK & MERRICK,
Att'y- for Petitioner.

Order on Amended Petition of the Remington Paper Company.

Let this amended and supplemental petition be allowed and filed.
New Orleans, May 24th, 1894.

(Signed) T. C. W. ELLIS, *Judge.*

Interrogatories to be Propounded to Mr. Addison Weeks.

Civil District Court, Division A.

REMINGTON PAPER CO.
vs.
JOHN W. WATSON ET ALS. } No. 39100.

17 Interrogatories to be propounded to Mr. Addison Weeks, a witness on the part of the plaintiff, now temporarily in the city of New York, commission to issue to Percy L. Klock, Esq., notary public, or any other notary public or Louisiana commissioner in the city or county of New York.

Interrogatory 1st. Are you acquainted with the parties to this suit or any of them, The Louisiana Printing and Publishing Company, Limited, being among the defendants? If yea, state which of them.

If you have been or are in the employment of either or any of said parties, state which of them and in what capacity and how long you have been so employed.

2nd. If you shall answer that you have been in the employment of the plaintiff as their agent in any capacity, state whether or not you were ever in Louisiana in such capacity. If yea, what dealings, if any, took place or were had between yourself or any other person on behalf of the plaintiff as agent or agents and the said Louisiana Printing and Publishing Company, Limited. Please state what such dealings were while you were in Louisiana, at what time they took place, and what was the result of such dealings, and, if any debts or accounts were created or resulted therefrom, what was the amount of the accounts and which party fell in debt to the other and for how much and on what account, and, if any legal proceedings were commenced in Louisiana, please state in what court they were commenced and about what time and whether you were present and who acted as an agent and who made the affidavit. Please answer each part of this interrogatory so that your answer will be clearly understood without reference to or comparing it with
18 the separate branches of this interrogatory.

3rd. At the time of the commencement of the suit of the plaintiff in the circuit court of the United States against the Louisiana Printing and Publishing Company, Limited, if you shall say such a suit was commenced, how much did said last-mentioned company actually owe to the plaintiff, including all the promissory notes?

4th. If the plaintiff undertook to ship the Louisiana Printing and Publishing Company, Limited, at New Orleans, any paper for newspaper printing, please state in what quantities it was sent out, and was any of said paper so sent out left over and unused by said defendant at the time said attachment suit was commenced in the circuit court of the United States for the eastern district of Louisiana.

Int. 5th. Do you know of any other matters or thing of importance to the plaintiff in this suit? If you shall answer yea, please state the same fully and as particularly as if specially interrogated thereto.

By MERRICK & MERRICK,
Att'ys for Plaintiff.

E. T. Merrick, Jr., being first duly sworn, on oath saith that plaintiff's domicil is out of the State, and that affiant believes that the testimony of said witness, A. Weeks, is material in this cause.

(Signed) E. T. MERRICK, JR.

Sworn to and subscribed before me this 26 July, 1894.

[SEAL.] (Signed) OMER VILLERE, *Not. Pub.*

Answer to Interrogatories.

Deposition of witness produced, sworn, and examined on the
19 22nd day of September, 1894, at office of Percy L. Klock (room 311), No. 203 Broadway, New York city, under and by virtue of the annexed commission, issued out of civil district court for the parish of Orleans, State of Louisiana, to take depositions in a certain cause pending and at issue between Frank H. Pope, plaintiff, and Louisiana Printing and Publishing Company, defendant, and The Remington Paper Company, intervenor.

ADDISON WEEKS, who, being first duly sworn on the Holy Evangelists, on this the 22nd day of September, 1894, doth depose and say as follows:

First. To the first interrogatory he saith:

I am acquainted with the Louisiana Printing and Publishing Company, Limited, and also with the Remington Paper Company. I am in the employ of the said Remington Paper Company in the capacity of agent and salesman, authorized by them to make contracts for the sale of paper and collect for same, and have been employed in that capacity for nearly eight years.

Second. To the second interrogatory he saith:

I was in the city of New Orleans, Louisiana, first in the month of May, 1892. I then made an agreement with one Nathan Greeley, who was then acting as business manager of the said Louisiana Printing and Publishing Company, Limited, by which agreement the Remington Paper Company agreed to deliver certain newspaper at the office of said printing and publishing company in the city of New Orleans. The paper, as agreed upon, was so delivered, and by reason of said agreement and the delivery of said paper by Remington Paper Company to the Louisiana Printing and Publishing Company the last-named company became indebted to the Remington Paper Company. I was in New Orleans again in the month of December, 1892, and made a further agreement
20 with said Louisiana Printing and Publishing Company, Limited, at that time binding the Remington Paper Company to deliver further lots of paper to the Louisiana Printing and Publishing Company, which the said Remington Paper Company did, and by reason of which the Louisiana Printing and Publishing Company became further indebted to the Remington Paper Company, a portion of which indebtedness was paid.

Deponent afterwards being in the city of New Orleans, an action was begun in the United States circuit court to recover the amount due from the said Louisiana Printing and Publishing Co. to the Remington Paper Company. Acting for said Remington Paper Co. as agent, I made the necessary affidavits in that action.

Third. To the third interrogatory he saith:

That at the time of the commencement of the action in the U. S. circuit court by the Remington Paper Co. against the Louisiana Printing and Publishing Co. there was due the Remington Paper

Company from the said Louisiana Printing and Publishing Co. the sum of four thousand one hundred and twenty-one dollars and sixty-three cents, less freight on shipments of December 10th, 1892, and March, 1893, which said amounts for freight were paid by the Louisiana Printing and Publishing Co. for the account of the Remington Paper Company, the exact amount of which this deponent cannot state.

Fourth. To the fourth interrogatory he saith:

Deponent cannot state the exact amount of paper shipped by the Remington Paper Company to the said Louisiana Printing and Publishing Company, but knows that there were in all eleven carloads so shipped, and there was left over and unused at the time of the attachment suit in the U. S. circuit court testified to in the previous answer nearly a car-load of said paper.

(Signed) ADDISON WEEKS.

21 Sworn to and subscribed before me this 22d day of September, 1894.

[SEAL.] (Signed) PERCY L. KLOCK,
Notary Public, New York Co.

Affidavit of Percy L. Klock, Notary Public, N. Y. Co.

I, Percy L. Klock, the undersigned, notary public, do certify that I caused Addison Weeks, witness hereinbefore named and examined, to appear before me, at the time and place above named, and, after publicly and solemnly swearing him on the Holy Evangelists to tell the truth, the whole truth, and nothing but the truth in answer to the annexed interrogatories, I then and there proceeded to examine him by propounding to him the annexed interrogatories and reducing in my presence and that of the witness his answers thereto in writing with my own hand and — there caused said witness to sign his deposition in my presence, as already stated.

In testimony whereof I have hereunto set my hand and seal on this 22d day of September, 1894.

[SEAL.] (Signed) PERCY L. KLOCK,
Notary Public, N. Y. Co. (27).

Interrogatories to be Propounded to Nelson R. Casuell and J. Richard Holden, of Jefferson County, New York.

Civil District Court, Division A.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL. } No. 39100.

Interrogatories to be propounded to Nelson R. Casuell and J. Richard Holden, of Jefferson county, New York, witnesses on behalf
22 of the plaintiff, commission to issue to E. C. Dorwin, notary public, or to any other notary public, Louisiana commissioner, or any justice of the peace in said county.

Interrogatory 1st. Are you acquainted with the parties to this suit or any of them? If so, which of them and how long have you known them?

2nd. If you have or have had any business relation with the said Remington Paper Company, plaintiff in this case, state the same and what capacity you sustained or do sustain in relation to plaintiffs and what means you have had of being acquainted with their business.

3rd. If any business relations existed between the plaintiff and the Louisiana Printing and Publishing Company, Limited (also called the New Delta Company), during the years 1892 and 1893 or previously, please state fully what such business relations were. If you shall say that the plaintiff furnished the said Louisiana Printing and Publishing Company, Limited, with printing paper for a newspaper published in New Orleans at any time, state when it was furnished, the amounts of said printing paper so sent, in what way and by what quantities it was sent, and all you may know in regard to such shipments to said Louisiana Printing and Publishing Company, Limited. State fully.

4th. Who paid the freight on said shipments? How did the accounts stand between said plaintiff and said Louisiana Printing and Publishing Company, Limited, on the twenty-ninth day of May, 1893? If any suit was brought against the said Louisiana Printing and Publishing Company, Limited, by said Remington Paper Company, state if you know or have heard where such suit was brought.

23 5th. If you have given testimony in said case or the contrary, please state the fact.

6th. If, in answer to the fourth interrogatory, you shall say that there was an account stated between said Louisiana Printing and Publishing Company, Limited, and said plaintiff, state how much it was and which party, if either, fell in debt to the other and how much. If promissory notes were given in liquidation or otherwise for such indebtedness or any part thereof, state the same and whether said promissory notes were given or received as additional security for the said debt, or as liquidating the debt, or as payment

and extinguishment of the debt, or for some other purpose; and if so, what the purpose was. State fully.

Interrogatory 7th. To Nelson R. Casuell: If you have in any other testimony you may have given said that said notes were taken in part payment of the account, please explain your meaning in reference to the extinguishment of the debt by the receipt of the notes. State fully. Who holds the unpaid notes and what are the amounts thereof?

8th. Do you know any other matter or thing of importance to the plaintiff? If so, state the same as fully and particularly as if specially interrogated thereto.

By MERRICK & MERRICK,
Att'ys for Plaintiff.

E. T. Merrick, Jr., being first duly sworn, on oath saith that the domicil of plaintiff is out of the State, and that, in affiant's opinion, the testimony of said witnesses is material in this case.

(Signed) E. T. MERRICK, JR.

Sworn to & subscribed before me this 26th day of July, 1894.

[SEAL.] (Signed) OMER VILLERE, *Not. Pub.*

24 *Answer to Interrogatories.*

Civil District Court for the Parish of Orleans, the State of Louisiana.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL.

I, E. C. Dorwin, a notary public in and for the county of Jefferson and State of New York, and duly appointed commissioner to take the testimony of the witnesses Nelson R. Caswell and Rickard Holden, as appears by the annexed commission, do hereby certify that I have procured the said witnesses, Nelson R. Caswell and Richard Holden, to personally appear before me, and, first having duly taken their respective oaths on the Holy Evangelists, the following testimony was duly taken by and before me:

NELSON R. CASWELL, first being duly sworn, *and* testified as follows:

The witness being interrogated as to the first interrogatory testified as follows:

I have been acquainted with the Remington Paper Company since early remembrance, say 20 years.

The witness being interrogated as to the second interrogatory testified as follows:

I am treasurer of the Remington Paper Company and as such have access to everything pertaining to its affairs.

The witness being interrogated as to the third interrogatory testified as follows:

During the time between June 1st, 1892, and April 1st,
25 1893, the Remington Paper Company furnished the Louisiana Printing and Publishing Company, Limited (also called the New Delta Company), with printing paper for a newspaper published in New Orleans, La., during that period in car-load lots, a car-load being shipped on each of the following dates (by freight): June 4th & 16th, August 1st & 13th, Sept. 15th, Oct. 3d, Nov. 3d & 11th, & Dec. 10th, 1892, and Feb. 3d & March 17th, 1893, eleven car-loads in all.

The witness being interrogated as to the fourth interrogatory testified as follows:

The freight on said shipments was paid by the Louisiana Ptg. & Pub. Co., and we allow them credit for same, as we were to deliver the paper in New Orleans, La. On the 29th day of May, 1893, the Louisiana Ptg. & Pub. Co., Limited, owed the Remington Paper Company a large amount. A suit was brought against them in New Orleans, La., by the Remington Paper Company.

The witness being interrogated as to the fifth interrogatory testified as follows:

I gave testimony in said suit.

The witness being interrogated as to the sixth interrogatory testified as follows:

The Louisiana Ptg. & Pub. Co. on May 29th, 1893, was indebted to the Remington Paper Company to the extent of $4,121.63, less freight on shipments of Dec. 10th, 1892, & March 17th, 1893. Two promissory notes were received by the Remington Paper Company in settlement for the shipments of Nov. 3d & 11th, 1892, respectively, and one note on account for shipment of Feb. 3d, 1893, that being a balance of bill of $111.60 still due on this shipment.

Nothing has been received on account of shipments of Dec.
26 10th, 1892, & March 17th, 1893, except $200.00 received Sept. 12th, 1893, resulting from a suit of some kind brought, as I understood, in New York city. The account submitted herewith without doubt shows the amount due this company, viz., $3,921.63, less freight on shipments of Dec. 10th & March 17th, more clearly than can be explained otherwise.

The witness being interrogated as to the seventh interrogatory testified as follows:

My understanding was that when the notes received for shipments were paid by the Louisiana Ptg. & Pub. Co., Ltd., that those shipments were then liquidated. The notes, viz., $751.79, due May 6th, 1893; $745.01, due June 1st, 1893, & $621.82, due July 12th, 1893, are now held by the Remington Paper Company or its attorneys.

The witness being interrogated as to the eight- interrogatory testified as follows:

I think that the ground has been covered in the answers to former questions.

(Signed) NELSON R. CASWELL.

Statement Mentioned in Sixth Answer of N. R. Caswell.

WATERTOWN, N. Y., —— —, 18—.

M. Louisiana Ptg. & Pub. Co., Ltd., or New Delta, New Orleans, La., in acct. with Remington Paper Co.

Terms: —.

1892.			
Dec. 10.	To paper, 33,305 #, at 3c., less freight.....		$999.15
1893.			
Mar. 17.	" 29,742 #, " " " "		892.26
	Am't carried forward.....		$1,891.41
27	Am't brought for'd.		1,891.41
Feb. 3.	To paper, 31,097 #, at 3c.....	$932.91	
Ap'l 14.	By fr't on same....	$123.98	
"	" 2,517 # waste, at 3c.....	75.51	
"	" note due July 12.....	621.82	
		821.31	
			111.60
	To note due May 6th, '93.....		751.79
	" " " June 1st, "		745.01
	" " " July 12th, "		621.82
			4,121.63
Sept. 12.	By am't received from suit.....		200.00
			3,921.63

Subscribed & sworn before me August 30th, 1894.

[SEAL.] (Signed) E. C. DORWIN,
Notary Public and Commissioner.

RICHARD HOLDEN, being duly sworn, testified as follows:

The witness being interrogated as to the first interrogatory testified as follows:

I have been acquainted with the Remington Paper Company for a number of years; perhaps twenty.

The witness being interrogated as to the second interrogatory testified as follows:

I have had & still have business relations with the Remington Paper Company such as would naturally arise from being connected with said company in the capacity of having full charge of the shipping and weighing of paper.

The witness being interrogated as to the third interrogatory testified as follows:

28 I know that between June 1st, 1892, & April 1st, 1893, eleven car-loads of paper were shipped by freight to the New

Delta, New Orleans, La., a car-load on each of the following dates: June 4th & 16th, August 1st & 13, Sept. 15th, Oct. 3d, Nov. 3rd & 11th, Dec. 10th, 1892, and Feb. 3d & March 17th, 1893.

The witness being interrogated as to the fourth interrogatory testified as follows:

I understand a suit was brought in New Orleans, La., to collect an amount due the Remington Paper Company.

The witness being interrogated as to the fifth interrogatory testified as follows:

I gave testimony in the suit.

The witness being interrogated as to the sixth interrogatory testified as follows:

I cannot answer this question.

The witness being interrogated as to the eight- interrogatory testified as follows:

I think not.

(Signed) RICHARD HOLDEN, Jr.

Subscribed & sworn before me August 31st, 1894.

[SEAL.] (Signed) E. C. DORWIN,
Notary Public & Commissioner.

Judge Merrick offers and introduces in evidence the certificate of election of April 19th, 1893; also the minutes of the La. Printing & Publishing Co. of May 1st, and also the minutes of May 16th, 1893, with leave to file copies of said minutes; also a certified copy or transcript of the suit of the Remington Paper Company,
29 Limited, from the U. S. circuit court, bearing number 12197, offered for the purpose of establishing the allegations in plaintiff's petition; and it is agreed that the charter of the company, as copied in that record, will be received in evidence and the production of any other dispensed with.

For the purpose of establishing the allegations of the petition, Judge Merrick offers and introduces in evidence the application of the receiver, so called, filed May 17th, 1893, in cause #39100, and the order of court entered upon the same, dated May 17th, 1893, and signed by the judge of division "A."

Also, for the same purpose, offers and introduces in evidence the so-called intervention of the State of Louisiana, filed in this case, #39100, May 18th, 1893; also, for the same purpose, offers and introduces in evidence — of the Memphis Commercial and of A. W. Hyatt, stationer, & Manufacturing Company, Limited, filed May 18th, 1893.

Also offers and introduces in evidence, for the same purpose, the application of John W. Watson, styling himself receiver, to fix bond for certain orders filed in this cause, #39100, on June 6th, 1893.

Also offers and introduces in evidence the commission issued in the case of the Remington Paper Company *versus* John W. Watson *et al.*, to take the testimony of Nelson R. Caswell and J. Richard Holden, residing in Jefferson county, New York, executed by E. C.

Dorwin, notary public, to whom the commission was issued, together with the interrogatories and answers thereto annexed.

Counsel for plaintiff also offers and introduces in evidence commission to take the testimony of Addison Weeks, city of New York, county of New York, State of New York, together with the answers of the witness and the interrogatories annexed thereto, said commission having been duly executed by Percy L. Klock, to
30 whom said commission was issued.

Mr. THOMAS G. RAPIER sworn for plaintiff.

Direct examination by Mr. MERRICK:

Q. Mr. Rapier, are you acquainted with the plaintiff and defendant in this case?

A. I know Mr. Watson, the receiver.

Q. Do you know a corporation by the name of the Louisiana Printing and Publishing Company, Limited?

A. Yes, sir.

Q. Did you ever have any dealings with any gentleman representing that company?

A. Yes, sir.

Q. Do you remember what time they dissolved? Do you remember when the company ceased carrying on the newspaper called the "New Delta"?

A. Well, in the beginning of May, 1893.

Q. Did you have any dealings with anybody representing that company at that time?

A. As the business manager of the Picayune, I made arrangements with them to fill their contracts with subscribers and to purchase some of their material.

Q. State what those arrangements were.

A. Well, the arrangements were the Picayune was to take charge of their subscription list as it stood, and to send the Picayune to all the subscribers of the Delta who had paid the Delta in advance. We also agreed to buy, at a fair price, such material as they had on hand as we could make use of.

Q. Well, as a matter of fact, what did you buy of the material they had on hand?

A. We bought some stereotype metal, some stereotype
31 paper, some galleys, and a mail list, all set in type, amounting to a little over $700.

Q. What did you do with those subscribers to the Delta who were perfectly good and yet had not paid in advance?

A. Well, we stopped all the papers that were not paid for in advance. We did not send the Picayune, except for two or three days, to those parties.

Q. Did you send them a notice if they did not pay up that then you would quit?

A. No, sir.

Q. You simply sent them the Picayune for two or three days?

A. The arrangement was concluded on a Saturday night, and for

two or three days we sent the Picayune until we could revise the list. It was understood that the amounts due the Delta were to be collected by somebody else; we had nothing to do with that.

Q. You said this arrangement was made Saturday night. Do you remember what the date of the month was?

A. Well, it was about the 7th of May, if that was a Saturday—7th of May, 1893. It was in 1893,

Q. Who were your arrangements made with?

A. Well, partly with Mr. Parker, the manager of the Delta, and partly with Col. J. D. Hill, the president of the company. The negotiations extended over a period of about a month. There were a number of conversations, and it was finally concluded with Col. Hill, the president of the company, in the presence of Mr. Parker.

Q. What was said about the advertisements of the Delta?

A. Well, at the beginning they wished us to pay a pretty good sum for the Delta, and during the course of the negotiations
32 the list of the contracts the Delta had for advertising was submitted to me, and I studied it over and found that the Picayune could not afford to take the advertisements and fill those contracts, and we declined to have anything to do with the advertising contracts.

Q. What was the pretty good sum that they wanted?

A. Well, the first proposition was to make a stock company of the Picayune of two hundred or two hundred and fifty thousand dollars and to give the Delta fifty thousand dollars of the stock. Then they dropped from that, and I think the last proposition Col. Hill made was that we should pay five thousand dollars cash. That was some two weeks before the final arrangement.

By the COURT: The Saturday to which you allude was the 6th day of May?

A. Yes, sir.

By Mr. MERRICK: It was the 6th of May instead of the 7th of May this was done. What other consideration, if any, was paid by the Picayune?

A. There was no other consideration paid.

Q. What was done about the advertisements? As a matter of fact, were the advertisements allowed to go?

A. I never knew what was done about the advertisements.

Q. Who in your office would be likely to know that?

A. Nobody.

Q. Are you prepared to say that some of those advertisements were not continued and carried on in the Picayune?

A. Yes, sir; I am prepared to say so.

Q. Are you prepared to say that the business of the advertisement of Phillip Werlein in the New Delta, which had been prepaid, was not carried on in the Picayune?

33 A. It was not. It was carried on in the Picayune for the Picayune's account under contract made with the Picayune, but had no connection with the Delta.

Q. Who made that contract?

A. I don't know who made that contract; it must have been made by one of our solicitors.

Q. What was said about the line of policy, if anything, of the Picayune?

A. With reference to what matter?

Q. With reference to its conduct in carrying on the business of the New Delta, so far as its subscribers were concerned.

A. Well, I don't exactly catch the drift of your question.

(Question read over to the witness.)

A. Well, the policy of the Picayune—its obligation—was simply to furnish the Picayune to the subscribers of the Delta who had paid in advance. If a man had paid for the Delta for one year, we agreed to supply the Picayune. I think the Delta's subscription had been $6, or something of that kind, a year, and the Picayune was $12, and we agreed to supply them for a year. We supplied them for the full length of time they paid for the Delta in advance. We conceived that to be good policy rather than have quarrels with these subscribers.

Q. Now, Mr. Rapier, as I understand it, you have paid the Delta $700 for all of which you received seven hundred dollars' worth of assets. Am I right about that?

A. Seven hundred dollars' worth of material.

Q. So that squares that transaction?

A. Yes, sir.

Q. Now, what was the consideration paid for turning over to your paper the subscription list of the New Delta?

34 A. The consideration paid was we furnished the Picayune without getting a cent of money.

Q. Were there not other papers in the city of New Orleans that would have been glad to have had that subscription list?

A. I don't know. There was only one other paper that could have filled the conditions, and I don't know whether they would have accepted the agreement.

Q. It does not cost very much to send papers around, does it; nothing more than the cost of the paper; very little more than the cost of the paper and the expense of delivery after you have got a fine new printing press?

A. Well, you have got postage and you have to pay extra clerk hire and wrapping paper.

Q. How was that $700 paid?

A. Paid in a check on the bank.

Q. Paid in cash, then, practically?

A. Paid in cash; yes; in the shape of a check.

Q. Was there any political consideration in this transfer, whether outside or otherwise?

A. No, sir.

Q. Was there anything said in the transfer——

A. Nothing said about a transfer.

Q. Was there anything said in the transfer about the support of any individuals or anything in the line of policy of the paper?

A. Well, something of that kind was mentioned at the beginning of the negotiations, but that was not entertained at all or thought of, and, in fact, I have forgotten exactly what it was.

Q. Was the line of policy of the Delta carried out by the Picayune?

A. The Picayune's policy, editorial policy, was not effected
35 in any way by the transaction with the Delta.

Q. Put the answer the other way now, Mr. Rapier, and perhaps you will approximate an answer to the question: Give us the converse of that, as to how the Delta policy is continued by the Picayune.

A. As I understand, the Delta died and had no policy.

Q. As to how it was continued by its successor in the subscription lists.

A. In the subscription list the Delta's policy seemed to be to allow a large number of papers to run on without getting paid for them. We did not continue that policy.

Q. Please tell us if the Delta's political policy was carried out by the Picayune—the policy of the old Delta—the New Delta, rather, it is called.

A. Well, I don't know what the Delta's policy was, excepting on the lottery issue, and that was settled, and the Picayune never adopted any of the Delta's views on that subject.

By Judge MERRICK: Was there not a decided difference in the policy between the Picayune and the Delta from the start up to the termination of the Delta?

A. Only on the lottery question. I think in other respects the two papers were very much the same.

Q. Well, which was the lottery paper?

A. The Picayune favored the adoption of the amendments. The Delta was opposed to the lottery.

Cross examination by Mr. GARLAND:

Q. Was there any vast disproportion in the assets turned over to the Picayune for this $700 and the money, or was that a fair price for it?

A. I considered that a liberal price at the time the bargain was made.

36 Q. Is the mere subscription list of a newspaper, in itself, worth anything?

A. The mere subscription list?

Q. Yes; just the mere subscription list of the former subscribers.

It is admitted by counsel for defendant that he considers the witness now on the stand as an expert.

Q. Was the mere list of the subscribers of a newspaper worth anything? How much would you give today for the list of the subscribers of the Times-Democrat?

Mr. Merrick objects as being irrelevant.

A. Well, I consider that the Delta's list was worth to the Pica-

yune the cost of sending a large number of papers for a number of months without receiving a cent of consideration direct from the Delta or from those subscribers. I never figured out the exact cost to the Picayune of sending those papers, but it must have run up into thousands of dollars.

Q. Your purpose, then, was simply to induce them to continue their subscription with the Picayune?

A. Our idea was, if we sent the Picayune to these people for three, six, or twelve months, they would get in the habit of reading the Picayune and would continue the subscription to the Picayune and pay us for their subscriptions. That was the main idea.

By Mr. MERRICK: You knew that when the Delta, as a newspaper, had expired that the Picayune was nearer in line with it than any other morning paper, did you not?

A. Yes, sir.

By Judge MERRICK: Well, suppose that the good will of the Times could be transferred with its subscription list, would that be of value?

37 A. Of the Times?

Q. Yes; of the Times-Democrat.

A. It would be of very great value; yes, sir.

Q. Wouldn't that be the case with any other respectable paper that had a large list of subscribers? If you could get the good will along with the transfer, wouldn't that be of great value to any paper?

A. Well, that would depend upon conditions. The Times is the only rival newspaper here.

Q. Answer the question I am asking. Not what you made out of the Delta, but the value is what we are trying to get at. Now, I ask you that question in reference to any other paper, the New York Herald, for instance. If you had the good will of that paper, wouldn't that be worth hundreds of thousands?

A. The good will of a paper depends almost entirely upon whether it is doing a paying business. If a paper is not doing a good business its good will is not worth much.

By Mr. MERRICK: Was Mr. Nicholson present at any of these conversations between Messrs. Hill, Parker, and yourself?

A. No, sir.

Q. You had conversations with Mr. Nicholson before you saw Messrs. Hill and Parker, did you not?

A. I had a conversation with him after I had seen Mr. Parker the first time, and I told him what had transpired.

Q. That was the time when they wanted fifty thousand dollars of stock in a two-hundred-and-fifty-thousand-dollar corporation, wasn't it?

A. Yes, sir.

Q. Did you see him afterwards?

A. I reported to him at various times what was going on.

38 Q. Had Mr. Nicholson a controlling interest in the paper, or Mrs. Nicholson?

A. Well, in business affairs Mr. Nicholson's views prevailed generally.

Q. Well, did you have authority from Mr. Nicholson to make the offers that you did in the negotiations that you made?

A. Well, I hold the general power of attorney of the firm of Nicholson & Company and have held it for a number of years, and I went along according to my own views and reported to him whenever anything out of the ordinary had happened.

Mr. PETER KIERNAN sworn for plaintiff.

Direct examination by Mr. MERRICK:

Q. Mr. Kiernan, what is your business?

A. I am manager of the Evening Telegram.

Q. What was your business in May, 1894?

A. I was proprietor of the Daily Truth.

Q. What was the Daily Truth?

A. An afternoon newspaper.

Q. What were the politics of the Daily Truth?

Q. What do you mean?

Q. On the principal questions of the day existing at that time.

A. In 1893?

Q. Yes; 1893 and 1892; all along there.

A. I suppose you mean if we were an anti-lottery or lottery paper?

Q. Yes, sir; exactly.

A. We were an anti-lottery paper at the time.

Q. Do you know a corporation called the Louisiana Printing & Publishing Company, Limited, commonly called the New Delta?

A. Yes, sir.

Q. Did you ever have any conversation or dealings with anybody representing that paper?

39 A. Yes, sir; I had some business on two or three occasions.

Q. Did you know at the time that they could not carry on their business, that their condition was one of inability to proceed any further?

A. I understood they were in a bad condition and about to close up before they did close up.

Q. Did you make them any offer about purchasing their plant or their subscription list?

A. I think I did.

Q. What was that offer that you made them?

A. I cannot think exactly what the terms of the offer were. I made two or three offers to them. It is over two years ago and I have had no occasion to think of the matter until I spoke to you about a half an hour ago or an hour ago. I think, though, that I offered to purchase the plant outright, and I subsequently made an offer for the good will of the paper.

Q. Do you remember how much you offered for the good will of the paper?

A. I believe $5,000.

Q. Do you consider the good will of a paper and its subscription list and advertising privileges and all that as worth anything?

A. If the paper is paying I think it is worth something; it is worth considerable money.

Q. You have been in the newspaper business how long, Mr. Kiernan?

A. I have been in the newspaper business about seventeen or eighteen years.

Q. You consider yourself familiar with the business in all its details?

A. In a general way, yes, sir.

40 Q. From what you knew of the newspaper business and of the value of the good will of a paper and its custom, advertising privileges, and so on, do you consider that the Picayune paid enough for the subscription list of the New Delta?

A. Yes, sir.

Q. Then why did you offer five thousand dollars?

A. I offered that for the advertising privileges and the entire good will of the paper.

Q. What became of the entire good will? What became of the good will of the paper?

A. It disappeared when the Delta ceased publishing.

Q. Did the Picayune get it?

A. Well, they bought—I understood Mr. Rapier to say they bought a list of subscribers who had paid already. I will explain why I made an offer of $5,000, if you desire.

Q. Yes, go on and explain.

A. There was some gentlemen wanted to interest themselves with me in the publication of a morning paper. I had a plant. I was then running an evening paper, and the morning paper could be run with it. The name amounted to something, had been in existence for some years, and there was advertising privileges and unexpired contracts, and the Picayune was charging higher rates than they were, and I could have made money out of it, and there was a city subscription. I got all the information I could and I thought it worth $5,000. Ten thousand dollars would not have brought about the same results by starting another paper.

Q. It was worth more to you then than to the Picayune?

A. Yes, sir.

41 Q. Wasn't it possible that the Picayune was delivering papers already to some of the subscribers of the New Delta, whereas, if you started a morning paper, of course, they would be new subscribers to you?

A. Yes, sir; they would be entirely new to me.

Q. When you made that offer of $5,000, was that a *bona fide* offer?

A. Yes, sir.

Q. Were you able to carry it out?

A. Yes, sir.

Q. To whom did you make that offer?

A. I made that offer to Col. J. D. Hill.

Cross-examination by Mr. GARLAND:

Q. What do you understand by a subscription list, Mr. Kiernan?

A. There is two subscription lists on a daily newspaper; one the city subscription list and the other the State subscription list.

Q. Did you mean to carry out the agreement of the Delta to furnish newspapers to individuals for a certain length of time?

A. I wanted to get their entire business without any of their plant, the mechanical portion of it.

Q. Suppose a subscriber had subscribed to the Delta, and he had been furnished the Delta for six months and had subscribed for one year, you would have carried out that annual subscription and collected the entire annual subscription—was that the idea in your mind at the time?

A. No; the idea in my mind at the time—yes, if the subscriber had not paid for the previous six months.

Q. To the Delta?

A. Yes, sir.

Q. You would have made him pay for the entire time?

A. Yes, sir.

49 Q. And for that you offered five thousand dollars?

A. Yes, sir; it was not the subscription list alone; but they had a large number of advertising contracts that were worth money.

Q. Incomplete advertising contracts?

A. Yes, sir; and then they had the name of the Delta; that was worth something.

Q. Was your paper of the same grade of newspaper as the Delta—I mean as to its appointments and equipments?

A. Its mechanics—yes, sir; about the same.

Q. Did it have the same local service?

A. No, sir; not a telegraphic line.

Q. Did you have all the financial and market reports?

A. Not as complete; an afternoon paper, as a general rule, does not carry as complete a service as a morning paper, but that is a matter of arrangement.

Q. Your idea, then, in buying these incomplete advertisements that had not yet been paid for was to carry them out and receive the entire payment?

A. Yes, sir.

Q. What was stated to you by Col. Hill?

Mr. Merrick objects on the ground that it is hearsay, and that if Col. Hill represented the New Delta he cannot make evidence for himself, anyway.

Objection overruled.

Q. What was said by Col. Hill when you made that proposition?

A. Well, I will state: Previous to this offer I had made an offer for the entire plant, and it was to be paid for in time—I think five or six thousand dollars in cash and the balance on time—and Col.

Hill explained that he could not very well do that, on ac-
43 count of the nature of the corporation; that he wanted a strictly cash transaction, and then when I made the offer for the good will of the paper he seemed to entertain the idea that a portion of the paper could not be sold without all of it being sold; in other words, they had valuable machinery there, or they did not think they would be authorized to do it, or something; at any rate, he did not want to accept the proposition; but I think it was that.

By the COURT: In support of the ruling the court receives these statements of Col. Hill as they were made in the negotiations between Mr. Kiernan, the witness on the stand, and Col. Hill, with reference to the proposed sale or purchase.

By Mr. GARLAND: This offer of yours to Col. Hill was made when knowledge of the financial embarrassment of the Delta was published, was it not?

A. Yes, sir; I made the offer after I understood they were to suspend.

Mr. MERRICK: Mr. Kiernan, you were asked a question as to what you intended to do in case an annual subscriber who had not paid a cent had gone on for six months, whether you intended to collect at the end of the year for the whole year, and you answered yea. Suppose a subscriber had already paid in advance to the Delta for that year, what would have been your action in reference to the New Delta in the subscription where you had taken him up six months afterwards and the paper had still six months to run?

A. Well, I would have delivered the paper to him for the unexpired term. I took that into consideration. I was cutting both ways.

By Mr. GARLAND: What is the proportion of those who pay in advance and those who owe the subscription?

A. Well, it depends on how a paper is carried on. Some
44 papers exact payment in advance and won't deliver to subscribers unless it is paid, and some collect quarterly. Different newspapers have different methods.

By Mr. MERRICK: The Delta generally collected in advance, didn't it?

A. I don't know how they collected.

Mr. C. HARRISON PARKER sworn for plaintiff.

Direct examination by Judge MERRICK:

Q. Mr. Parker, in what capacity did you act towards the corporation called the New Delta?

A. Well, I was secretary of the board and I was manager.

Q. Do you know anything about any indebtedness of that corporation to the Remington Paper Company?

A. I believe the books showed that they owed them something.

Q. Well, here is a document to which your name is signed, but it seems to have been by somebody else. Please look at that and state whether that was issued with authority or not.

A. That was written by a gentleman who was acting as business manager at the time—Mr. O'Donnell.

Q. That is authentic, then; that is all right?

A. Yes, sir; I don't remember about the circumstances of that particular letter.

Q. Well, I speak of the authority; it is not forged or anything out of the way?

A. No, sir.

Counsel for plaintiff offer and introduce in evidence the letter referred to, marked "P 1."

By Mr. MERRICK: Mr. Parker, what became of the good will of the New Delta—was it transferred to anybody?

A. No; it was not.

Q. What became of the subscription lists?

45 A. We turned it over to the New Orleans Picayune.

Q. What did you get in consideration for the transfer of the subscription list to the New Orleans Picayune?

A. Nothing; we simply got released from an obligation to pay several thousand dollars of money to subscriptions which we had collected. We collected always in advance, as far as we could, and of course we owed the subscribers back that money for the unexpired term, and by getting some paper to carry out the uncompleted subscription list we were released from that much indebtedness.

Q. Mr. Kiernan has stated that if he had had the subscription list he would have carried that out, in addition to paying $5,000?

A. Well, I cannot remember; I do not remember what Mr. Kiernan's proposition was exactly now, but in dealing with that question the minutes of the board stated we were authorized to make some disposition of the paper, if we could—that was, we endeavored, in the first place, to dispose of it as a going concern, provided we could get enough for it to pay all the debts due outside parties; failing in that, we intended to dispose of the assets so as to get sufficient money to pay all its debts. We considered Mr. Kiernan's proposition and others which were made, purely from a business standpoint in the interest of the creditors. The Delta was a morning newspaper with telegraphic dispatches and publishing a weekly paper also. Mr. Kiernan was running an evening paper without telegraphic service and had no weekly edition. We had to furnish these people with the morning paper and a weekly paper. There were only two institutions in the city at that time to carry out such a contract, because it involved the expenditure of a large amount of money. We endeavored, in the first place, to effect a consolidation with the Picayune as a joint stock company.

46 In case that had been done the stockholders of the paper would have raised the money among themselves and paid all the obligations. We failed in that, and failed also to sell it as a going concern, and we then did the best we could.

Q. I object to your saying what the stockholders would have done on the ground that it is a matter of opinion on the part of the witness, and I ask the court to strike out the statement.

A. It is not a matter of opinion; it is an actual fact; some of them agreed to do it.

The court permits the statement to remain as *rem ipsam*.

By the WITNESS: The material which was sold to the Picayune consisted principally of the galleys and the standing type which formed the subscription list. The subscription lists are set up in type in galleys, and they used to print slips from it to send out the mail in the morning. That subscription list in type cost us several hundred dollars. As mere type it was not worth much, but it was of use to the Picayune, being already set up in galleys ready for them to send out their subscription list. We considered it worth more to them than anybody else, and we sold it to them, together with some type metal we had, and used that money to pay off the hands and labor of the paper for the last two weeks of the service. We did that in order to avoid a multiplicity of little suits. We considered that the labor there had a privilege anyhow. We used that money in paying the type-setters and employés.

Q. How much was that, Mr. Parker—how much money was that?

A. I don't remember the amount now; some seven or eight hundred dollars; I have forgotten how much; the books will show that.

Q. Now, Mr. Parker, what became of the advertisements in
47 the paper and the right to advertise in the Delta?

A. Well, a mere advertising contract is a contract with a newspaper. The advertising column is so many thousand lines, and so many squares, and so many weeks and months at a certain rate. It is not transferrable without the consent of the party advertising. It is hardly an asset.

Q. What became of all the advertising acquired by people who had paid the New Delta for that purpose?

A. I don't understand the question.

Q. What became of the right of advertising acquired by merchants who had paid the New Delta for that purpose, for space in that paper?

A. There is no such right, as I know of. They paid for their advertisements from month to month as they appeared in the newspaper, and if they had such a right they paid for those contracts as they appeared from month to month. When the paper stopped the contract was dead.

Q. Mr. Parker, do you mean to say that information was not given to the Picayune as to every man who had an advertisement in the Delta, so that they could carry out those advertisements or not carry them out for those people?

A. Yes, sir. We laid before Mr. Rapier all our business affairs; gave him a list of the contracts for advertising which we had, etc.

Q. Then when you say that you have not transferred to the Picayune your good will, you mean to modify it by that statement?

A. That was in the first negotiations we had with them.

Q. Then, in addition to carrying over to the Picayune all sub-

scription lists, they were also furnished with a list of the advertisers?

A. No, sir.

Q. They were not?

A. No, sir. The first negotiations, when we were talking with the view of consolidating the papers and other arrangements
48 which fell through, Mr. Rapier was given our contracts and subscription lists and everything of the kind to see the status of the paper. That all fell through.

Q. Mr. Rapier stated on the stand, if I recollect his testimony correctly in reference to an advertiser in the Delta, that his advertising agent agreed, probably as a special right, to continue that advertisement over to the end of the month or to carry it out, just as the Delta had agreed to do.

Q. No, sir; not as to advertisements.

Q. I said Mr. Rapier testified that might have been the case with reference to the advertiser in the Picayune.

A. No, sir; I didn't understand him to testify that.

Q. He did, all the same, about Mr. Werlein.

A. No, sir; he said he made a contract himself with Mr. Werlein.

Q. But he said his agent made a contract with Werlein and gave him as a special privilege the right of continuing the advertisement for the time it was put in the Delta.

A. No, sir. He had a special advertisement in the Picayune ever since he started, and while he was advertising in the Delta he was also advertising in the Picayune and other papers. None of the advertisements of the Delta were transferred to anybody. They could not be in the nature of the case. It could only hold where there was a consolidation of interest of the two papers. Where the same concern continued on, or rather something which you might call the same concern, you might hold the advertiser to his contract.

By Judge MERRICK: I understood you to say the subscription list was put in galleys. What became of those lists?

A. That is material which we sold to the Picayune. We paid for those by the pound, and they paid for them as material.

49 Q. Were you present at the last meeting of the Delta as an officer? Were any publications made of a call of the stockholders or a meeting of them, as mentioned in the charter of the company, at any of these years?

A. No, sir; the affairs had reached a crisis, and we did not think we had time to call a meeting of the stockholders, or that anything would result from it if we did.

Q. Do I understand you to say, while you were secretary of the Louisiana Printing & Publishing Company, up to the last meeting, on the 6th of May, 1893, there was no call, no general call, of the stockholders?

A. Yes, sir; there were several meetings of the stockholders.

Q. If you will listen to me I will finish my question and you will understand and know how to reply. I ask you if there was any

meeting of the stockholders with reference to the dissolution of the corporation or an appointment of liquidators?

A. No, sir.

By Mr. GARLAND: What was the intention of the board of directors passing the resolutions appearing in the minutes authorizing President Hill to sell such a property?

Mr. Merrick objects, on the ground that it is impossible for this witness to know what the intention was of the board of directors, and on the ground that the minutes are the best evidence, and the witness cannot testify as to the intentions of the board or what the board thought.

By Mr. GARLAND:

Q. What was the situation of affairs confronting the board of directors?

A. It is stated in the minutes there.

Q. It is stated that the president explained the situation. What was the situation?

50 A. Well, they had no money to go on with and could not go on. That was stated in the minutes of the meeting, that they had no money to go on with and could not go on. They had made every effort and found it impossible to go on.

Q. Was any effort made to sell the plant as a going concern?

A. I explained a while ago our efforts in that direction. Col. Hill and I were authorized to make an effort to dispose of the concern with the view of paying all debts to outsiders, and we did the best we could to accomplish that purpose.

Q. Was there any appearance of throwing any obstacles in the way of any creditor?

A. None whatever.

Q. Was there any design to favor any creditor?

A. None in the world, not so far as I was concerned. I am merely speaking of the design of Col. Hill and myself. I know what our design was.

Mr. Merrick objects to the witness speaking of the design of Col. Hill.

The court rules that the intention of the board would have to be shown by its minutes. Anything that does not appear in the minutes may be shown otherwise.

Q. In your contact with Col. Hill, was there anything in his manner indicating any purpose on his part to prefer any creditor or to throw any obstacles in the way of any creditor?

By the COURT: Now, if you know any fact upon which Col. Hill's intention can be inferred by the court you are at liberty to state that fact and not your opinion as to what Col. Hill's intentions were.

A. I don't know of any fact. The Col. showed that he had no

such intention. We conversed together and negotiated to-
51 gether and nothing occurred leading to any such inference.

By Mr. GARLAND: The Delta suspended in the early part of May, did it not?

A. I don't remember the exact date.

Q. The 6th or 7th of May?

A. I think it was about that time.

Q. Do you recollect at what time during that year the financial panic set in?

A. I do not.

Q. Wasn't it during the summer?

A. It was after that time.

Q. Could the plant of the Delta, if sold the latter part of May or early in June, have realized more than it did in 1894—June, 1893—May, 1893—on account of the prevailing existing conditions in finances?

A. I can only express my opinion on that.

Mr. Merrick objects.

Q. You are a business man, are you not? You are familiar with the condition of finances in the country in general?

A. Yes, sir.

Q. Well, what is your answer to my first question, as to whether the plant you sold in May or June, 1893, would not have brought more than it did when sold in 1894?

A. Well, we were under the impression——

Mr. Merrick objects on the ground that prospective profits cannot be shown, and that evidence of this sort is inadmissible; also that it is an attempt to prove prospective profits.

Also the further objection that the evidence is inadmissible under the pleadings in defendants' reconventional demand, on the ground that said reconventional demand shows no cause of action.

52 Mr. HENRY L. GARLAND, JR., being duly sworn, states:

I desire briefly to state the circumstances under which the intervention of the State, by the attorney general, was filed in this case.

Mr. Merrick objects on the ground that this is a professional communication if the gentleman represents the attorney general, and whether he is willing or not to state the communication, the law abhors allowing those things to go into evidence—things between attorney and client—and such things should never be brought out in court, whether they are favorable to his case or not.

The court allows the witness to proceed.

By the WITNESS: The intervention of the attorney general on behalf of the State was filed at the same time and moment that the petition of Frank H. Pope for the appointment of a receiver was filed.

Mr. Merrick objects as contradicting the record.

Mr. GARLAND continuing: But on account of my having forgotten to write out an order, to be signed by the judge, allowing the intervention, Mr. Rankin, the clerk, did not mark the intervention filed until the next day.

Mr. Merrick objects to all this testimony on the ground that it is contradictory, not only the written evidence, but the highest evidence in the world, by parol evidence.

Counsel for plaintiff objects to the testimony of this witness in anywise contradicting the record, on the ground that parol evidence cannot contradict the record of a case or the certificate of the clerk, which is the highest evidence, and counsel for plaintiff now requests the court to strike out all the evidence in this case showing anything that happened between counsel and court officers
53 going to contradict the judicial record in this case, and any conversations that may have occurred between said counsel and said court officers.

By the COURT: The court will hear the entire statement of Mr. Garland, now upon the stand, and will pass upon the motion to strike out after hearing the entire statement.

To which ruling of the court counsel excepts and reserves this note in lieu of a formal bill of exceptions.

By the WITNESS: The intervention was submitted to Judge Ellis at the same moment as the petition of Frank H. Pope.

Same objection, ruling, and bill.

By the WITNESS: The truth of this is shown by the fact that the judge's order appointing the receiver mentions particularly the intervention of the State of Louisiana by her attorney general.

By Mr. MERRICK: In whose handwriting is that order?

A. In my handwriting.

By Judge MERRICK: In whose handwriting is what you call the intervention?

A. In my handwriting, but signed by the attorney general.

Q. Did you present it to him?

A. I did.

The court refuses the motion to strike out, and states: I deem it my duty as the presiding judge of the court to make this statement. I have a distinct recollection of the time when the application of Frank H. Pope for this liquidation was presented to me, and I will state that the petition signed by the attorney general was presented to me at the same moment, and that when I attached my signature to the primary order in this matter that that petition was on my desk and before me. The statement made by Mr. Garland, so far as the presentation of that petition is concerned, is entirely correct.
54 I deem it a matter of justice to all parties in the case, and especially to him, as he has testified in the case, to make this statement. I have a distinct recollection in regard to it. As to the filing, of course, I know nothing about that. All I can state is, the petition filed by the attorney general was presented along with the other petition.

Counsel for plaintiff reserve a bill of exceptions *pro forma* to the ruling of the court.

By the COURT: What transpired with reference to the filing of the paper I know nothing at all; my attention was not directed to it. The two petitions came together, and the petition presented by the attorney general was a controlling factor in doing what I did. I state this in justice to everybody concerned.

Mr. JOHN W. WATSON sworn for defendant.

Direct examination by Mr. GARLAND:

Q. Mr. Watson, you are the receiver of the Louisiana Printing & Publishing Company?

A. I am.

Q. Have you been guilty of any collusion or conspiracy with anybody to have any creditor of this concern paid by preference over any others?

Counsel for plaintiff make the same objection as heretofore urged.

The court rules that any facts may be inquired of in relation to the matter at issue.

Counsel for plaintiff reserve a bill of exceptions.

A. I have not.

Q. Have you paid out any funds realized from this insolvency except by order of court?

A. I have not.

Q. Do you recollect what the printing press and apparatus of the New Delta sold for at public sale, what was realized?

55 Mr. Merrick objects on the ground that it is inadmissible under the reconventional demand of the defendants in this case, and said reconventional demand discloses no cause of action.

The court overrules the objection as going to the effect, and states: I will state right here that my reason for ruling in this way is that Mr. Watson is sued here, or at least the suit against him is solely connected with the receivership, and I think it my duty to make the record complete. A bill of exceptions will preserve the rights of the parties, and I will give such effect to this objection when I have the whole matter before me, and when I examine it, as in my judgment I may deem right and proper.

Counsel for plaintiff reserve a bill of exceptions to the ruling of the court.

By Mr. MERRICK: Here are the procès verbals, Mr. Garland, and I wish you would file them. I would like to get them out of my hands.

Mr. Garland offers and introduces in evidence the procès verbals of sale by Placide J. Spear, the auctioneer.

Counsel for plaintiff, The Remington Paper Company, object to the introduction of these procès verbals, on the ground that they are *res inter alios acta*, not binding on the plaintiff, and also on the ground that the reconventional demand discloses no cause of action,

and also the further objection that this document and this testimony tends to destroy the effect and right obtained under the attachment and sequestration issued in this case from the circuit court of the United States, and it is against the Constitution and laws of the United States so far as it tends to destroy the force and effect of the action of the officer of the United States and the parties under the proceeding in courts of the United States; and, in so far
56 as this part of the case is concerned, counsel desires to reserve the right at a more convenient time to put this bill of exceptions in formal shape, so as to make it a part of the record.

By the COURT: The reservation of counsel's right to prepare a formal bill of exceptions is reserved, and as to the other objections the court rules as before and refers them to the effect of the evidence.

By Mr. GARLAND: Mr. Watson, do you know of any preference having been given any one creditor over others since you have been in charge of the affairs?

A. I know that none has been given. Nobody has been paid anything except by order of court.

Q. The balance of the funds, except such as have been paid by order of court, are in bank?

A. In bank.

Q. Have you been guilty of any collusion or conspiracy with anybody in regard to the affairs of this company in any way?

A. None whatsoever.

Q. Do you know of any material fact that you would like to state bearing upon the issues in this matter—anything else material that you know of that you would like to state?

A. When I was asked to accept this office under order of court, there was not a word said about giving a preference to any creditor whatever. I was to be governed by the orders of the court entirely and exclusively; and about these payments to Mr. Pope, they were made previous to my administration. I had nothing to do with them whatsoever since I came down here and qualified and took the oath of office. I went back to Mr. Fischer and told him, as soon as I qualified, that he must not pay out any money ex-
57 cept his salary and that of the collector, and I kept one man upstairs to keep the type and things in order, and he (Fischer) was to collect as fast as possible. Those were the orders I gave Mr. Fischer. With regard to these payments to Mr. Pope, I know nothing. I had nothing to do with it whatsoever; it was previous to my administration.

Cross-examination by Mr. MERRICK:

Q. You knew nothing about the affairs of the New Delta beyond what you heard after you applied for the receivership?

A. I had some knowledge; I held some of the shares, and I always took a deep interest in the paper, and I knew a good deal of what was going on. I knew its whole history, and I knew they were losing money and had been losing money, and I made up my mind

that they would finally have to stop; that they were sinking money constantly.

Q. Is it not a fact that all you knew was hearsay?

A. No, sir; I had access to their books; sometimes I was called upon to look over their books.

Q. Then you knew about their affairs?

A. I knew something of their affairs—not all; but I knew considerable.

Q. Then what do you know about the payments to Mr. Pope?

A. Nothing, until I was informed that there was some arrangement made with him. That I had nothing to do with.

Q. Who informed you of that arrangement?

A. Mr. Parker.

Q. What was the arrangement with Mr. Parker?

A. I knew nothing, except that they owed him a good deal of money; that he had let it accumulate and stay there, and there was some money raised and he was paid part, as well as some of the other employés—most of the other employés. They were
58 looked upon as preference claims, and they were paid in part, otherwise there would have been a number of suits, which would have probably worked great injury to everybody.

By Mr. GARLAND: Mr. Watson, what amount of rent were you compelled to pay to Mr. Forman's client under order of court for the lease of one of those buildings?

Counsel for plaintiff make the same objection, that the reconventional demand discloses no cause of action, and as being irrelevant and inadmissible under the pleadings, and plaintiff in reconvention has no right to stand in judgment.

Same ruling and same bill reserved.

By the WITNESS: It was considered best to sell the movable property and collect the debts; that was towards the close of May, 1893. I proposed to close the sales of the movable property by the next month, in June. If I could have given up that property on the first of July or on the first of August I could probably have rented it. I certainly would not have had anything to pay after the end of that year, which was the first of October. I meant to sell the property and could have sold the property before the end of that lease, and would have done so had I got an order of court.

Q. Could you have dismantled that press and stored it away with any saving of expense?

A. No, sir; it would have cost a great deal, because parts might have got lost and disarranged, and we would have had to pay drayage and warehouse charges; so probably it would have been very unwise to have done anything of that kind. As it was, when the lease expired, Judge Ellis, after talking the matter over with me, ordered me to make a new lease for another year, which was only just, and I moved all the property out of one store into the
59 other and gave up one.

Q. You only kept the one that was absolutely necessary?

A. Only kept the one that was absolutely necessary.

Q. What was the amount of the rent of that building per month?
A. Fifty dollars per month.

It is understood that the same objection, same ruling and bill, applies to all similar testimony in this case.

Mr. Garland offers and introduces in evidence the entire entries in the minute book of the company and the rule of Thomas R. Lyons, taken by Mr. Forman, from October, 1893, to October, 1894, and the order of court; also the report of the appraisers to fix the value of the property at the time it was appraised; also offers and introduces in evidence the oath of the appraisers and the order of court appointing them.

To which offers counsel for the Remington Paper Company object, on the ground that they are irrelevant, that they are inadmissible under the pleadings, that the reconventional demand discloses no cause of action, and that plaintiff in said reconvention has no right to stand in judgment; and the further objection that all these matters are subsequent to the orders which are attacked by the suit filed in this case an the 9th of June, 1893.

The court makes the same ruling as heretofore and refers the last objection to the effect.

It is agreed that Mr. Forman's *ex parte* affidavit as to the value of Mr. Garland's services in the United States court shall be filed in lieu of taking his testimony herein, the rights of all parties being reserved.

STATE OF LOUISIANA,
Parish of Orleans.

Civil District Court, Division "A."

60 REMINGTON PAPER CO.
vs.
JOHN W. WATSON ET AL. } # 39100.

Testimony and Notes of Evidence Taken in Open Court on January 9th, 1896, Before the Hon. T. C. W. Ellis, Judge.

Mr. JACOB E. FISHER sworn for plaintiff.

Direct examination by Mr. MERRICK:

Q. Mr. Fisher, look at that—first I will inquire into the capacity. Were you employed by the Louisiana Printing and Publishing Company?

A. I keep the cash account.

Q. Are you conversant with the other books that belonged to that establishment?

A. Only those belonging to the general ledger and the cash book.

Q. I produce here a book marked "Minutes of the Louisiana Printing and Publishing Company, Limited."

A. I have nothing to do with that book.

Q. Do you know whether it belongs to the company or not?
A. I do not. I have never seen the inside of it. I have seen the outside of it.
Q. Say whether you could recognize that book.
A. I have seen that book in the office or a book very similar to that. I think that is it.
Q. Will you look at this book also? I don't see any mark on it.
A. That is the cash book—that is the journal.
Q. Well, do you recognize the book?
A. Yes, sir; I recognize the book. I recognize my writing.

By Mr. MERRICK:

Q. Mr. Fisher, examine the entries on page 39 of the book you have described as the journal and state what the meaning of the entry is, "Frank H. Pope, May 15th, $89.50."
61 A. Paid him on account of his salary.
Q. Examine the entry right underneath, "Frank H. Pope, May 17th, $260.84." What is that?
A. Mr. Pope was an employé of the company and he did not draw his salary; he left it there to his credit, but he drew money on account when the company had it to spare and he needed it.
Q. What is the entry underneath, Paid to Clark seventeen dollars? What is that?
A. Cash paid him. I don't know for what purpose.
Q. Can you tell, Mr. Fisher, where that money came from that was paid to Frank H. Pope on that day?
A. From the business.
Q. Can you tell the date it was collected?
A. No; I can't tell, because the money was always put in one pot, you might say.
Q. Examine the book called the advertising ledger, page #50, and state whose account you find there.
A. Philip Werlein.
Q. Do you find any money paid in by Philip Werlein on May 17th?
A. Yes, sir.
Q. Do you mean to say now to the court that no larger sums or other sums amounting to any large amount were received from other sources on that date?
A. I can't say without referring to the books, sir.
Q. Does not that journal show?
A. The cash book would show.

Counsel for plaintiff offers and introduces in evidence the extract from the books entitled "the advertising ledger," page 50, showing the collections on May 17th of the sum of $245.04, 1893.
Also extracts from the book called the journal, showing
62 the payments to Frank H. Pope on the 15th of May of $89.50, and on the 17th of May $260.84.

By Mr. GARLAND to counsel for plaintiff: What is the object of this offer?

By Mr. MERRICK: To prove that Mr. Pope was not a debtor of the publishing company; to prove that he was preferred for one thing, and it is also offered for the purpose of proving the allegations of the petition, and, among other things, we propose to show by this witness that on the 17th day of May, 1893, there was only due to Pope $319.00 on your books.

By Judge MERRICK:

Q. Examine the account of Frank H. Pope in the general ledger, on page 94, and state to the court how much appears to be due to Frank H. Pope.

A. About three hundred and twenty-five dollars—three hundred and twenty dollars. I can give you the exact figures, if you like.

Q. I would prefer it, Mr. Fisher, if you can.

A. Three hundred and nineteen dollars and fourteen cents ($319.14).

Q. On what date of the month—did you keep these books, Mr. Fisher?

A. I kept the books; yes, sir.

Q. Are they correct?

A. Yes, sir.

Q. Were you acquainted with the other books? Would you know the stock book if you saw it?

A. I have seen the stock book. I have had very little to do with it.

Q. Will you look at these books and state whether they were the books containing the subscriptions of stock?

A. That is evident, sir.

Q. Well, then, state the condition of those books as they are now.

A. I should say they were the stock books of the Louisiana Printing and Publishing Company.

63 Q. I want to show that they are worm-eaten.

A. They were not in that condition when I saw them last.

Q. What do you now say about them? I want it to go on record.

A. They seem to be worn and worm-eaten, as if by age.

Q. Are they not actually worm-eaten?

A. Yes, sir; but I think most of that has been done since I saw them last.

Q. Who was the secretary of that company during the time that you were the book-keeper?

A. C. H. Parker.

Q. You are acquainted with his handwriting?

A. Pretty well.

Q. Referring to the book which you have recognized——

A. Similar to that. I can't identify that as the identical book. I don't think I ever saw the inside of it.

Q. Do you know Mr. Parker's handwriting?

A. I know it pretty well.

Q. Will you look on page 64 of this book and state whether that resolution on the minutes there was in the handwriting of Mr. Parker?

A. I should say that it was, to the best of my belief.
Q. And how about the signatures?
A. I should say it was his.
Q. How about the other signature?
A. Colonel Hill; I am not so well acquainted with it.
Q. It looks like his handwriting?
A. Yes, sir; it looks like his.
Q. Now, the preceding page; in whose handwriting is that?
A. I should say it was Col. Parker's; it resembles it very much.
Q. How about the next page?
64 A. I should say the same.
Q. Are you acquainted with the handwriting on the paper attached—pinned to page 61?
A. That seems to be a copy.
Q. A copy?
A. It looks like a copy.
Q. How about that; the signatures of Mr. Horace Putnam?
A. Putnam's signature is the only one that I am acquainted with. I should say that is his.
Q. On page 60?
A. I should say that was Co-. Parker's handwriting.
Q. And page 59?
A. That all looks like his.
Q. Pages 58 and 57?
A. That is Col. Hill's signature there. I should say that was his signature, but I am not so well acquainted with it as that of Col. Parker's.
Q. How about page 54?
A. Page 54—A. A. Woods and C. Harrison Parker; the signature of C. Harrison Parker I should say was his. I am not so well acquainted with Mr. Woods' signature so as to say.
Q. How about pages 52 and 53?
A. No, sir; I don't know Mr. Bloomfield's signature.

By Mr. MERRICK:

Q. Mr. Fisher, examine the cash book No. 6 at page one and tell me how much money was received by the New Delta Company on May 17th.
A. $2.92 was received by the association.
Q. Was received by the association?
A. Yes, sir.
Q. How much has been received by the New Delta on
65 May 17th for advertising?
A. $343.79.
Q. How much was received from other sources?
A. Well, I would have to make a calculation of that—the journal shows that. The journal entry shows that there was a column for each source of revenue.

By Mr. GARLAND:

Q. Mr. Fisher, you were connected with the New Delta during the last months of its existence?

A. Yes, sir.

Q. Did you know or see any indication of fraud or mismanagement on the part of the directors and officers or employés of that association?

Judge Merrick objects to the question as to fraud on the ground that the information of the witness would depend entirely on what his views in regard to what the law was in regard to that particular thing, and that it is not competent to offer proof that any fraud was committed—was a question which depends upon the facts of the case to be developed before the court, and this sort of negative testimony is not testimony at all against the facts developed and to be developed here, from which the court will either affirm the allegations of the petition or deny them.

Objection overruled.

By the COURT: During the argument of the objections just disposed of the court asked counsel representing the Remington Paper Company if they were willing to put upon the record a disclaimer of any attack against the gentlemen concerned with the management of this paper company as to fraud and willing to acquit them of any intentional wrong-doing in the management of the concern, and, after some deliberation, counsel announced that they did not know; that they were not prepared to go to that extent, at
66 the same time expressing personally their own appreciation of these gentlemen, and that personally they did not desire to so charge them, and, counsel refusing to put this disclaimer upon the record, the court admits it just to allow the gentlemen connected with the management to show everything which they can in their own defense.

To which ruling counsel for plaintiff except and reserve this note lieu of a formal bill of exceptions.

A. I did not.

Question- by Mr. GARLAND:

—. What was the balance due Mr. Pope in June, 1893?

A. I can't say without reference to the books.

Q. Didn't you state a minute ago what it was?

A. Two hundred and sixty dollars. That was the amount paid him on account.

Q. Wasn't there a balance due him?

A. Yes, sir; there was a large balance due him still after that. I think a large balance—for the sum of three hundred and odd dollars.

Q. Were you connected with the company during the litigation?

A. Yes, sir; collecting outstanding accounts.

Q. Did you see any indication on the part of Mr. Watson to mismanage the affairs of this company in any way?

A. No, sir; I did not.

Same objection. Same ruling of court. Same bill of exceptions reserved and to apply to all testimony of this character.

Question by Mr. GARLAND:

—. Did Mr. Watson have anything to do with ordering the payment of two hundred and sixty dollars to Pope in May 17th, 1893?

A. I don't think he was present; I don't think he was there.

Q. He hadn't then taken charge?

A. No, sir.

67 Q. What was the nature of the orders given by Mr. Watson to you in the process of liquidating the affairs of this company—what did he tell you to do?

A. I only remember in general terms.

Judge Merrick objects on the ground that it is *res inter alios acta* and irrelevant. Counsel for plaintiff object to the question on the ground that the testimony sought to be elicited would be irrelevant and that it would be *res inter alios acta*, and that the defendant, Mr. Watson, cannot make evidence for himself by talking to the employés.

The court overrules the objection; to which ruling of the court counsel for plaintiff except and reserve this note in lieu of a formal bill of exceptions.

A. In general terms, it was to go along and make out the bills from the books of the company, and to go and collect them as far as I could and to report to him every night.

Q. Did you make any payments out of those collections, Mr. Fisher?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Mr. Watson instructed you to turn the money in to whom?

A. I turned the money in to Mr. Watson.

Q. Do you know the signatures of these various parties mentioned on this document?

A. I identify that as the petition which I circulated among the stockholders and got their signatures to it.

Q. All the parties who signed were stockholders?

A. All stockholders and they signed in my presence.

Mr. Merrick objects as not being the best evidence. The
68 court rules that the stock books would be the best evidence.

Mr. Garland states that it is only incidental and collateral and offers the document in evidence.

Mr. Merrick objects on the ground that it was not shown that these stockholders signed this agreement before the writs of attachment issued in the U. S. circuit court or even before the proceedings were filed in this court; that anything done afterwards could not interfere with the rights acquired by the plaintiff; all writs legally issued and proceedings legally taken, with the statement that these are stockholders, is not the best evidence, and that it is *res inter alios*

acta, in so far as the plaintiff in this case was concerned; and objects further that the signatures of these corporators do not appear to have been added to any resolution or any meeting in accordance with the act of incorporation which is in evidence here, and it in no manner conforms to the law of corporations of this kind. The court rules that on the question now in issue, as to who were the stockholders of this corporation, of course the stock books or the certificates would be the primary evidence, but the court permits the witness to answer the question and identify the document, and receives the same for the purpose of showing that the signatures thereon written were by the stockholders and taken in that capacity. The objection that the matter is *res inter alios acta* the court overrules on the ground that this seems to have been only an initial point in liquidating the affairs of this company, and the other objections are referred to the effect; to which ruling of the court counsel for plaintiff excepts and reserve this note in lieu of a formal bill of exceptions.

By Mr. GARLAND:

Q. Mr. Fisher, how long after Mr. Watson took charge was
69 the printing press and printing apparatus of the Delta, in the building where the Delta held its office—printing establishment?

A. I don't know when they were taken out.

Q. About how long?

By Mr. MERRICK:

Q. What is the object of the question?

Judge Merrick objects on the ground that the reconvention demand showed no cause of action; and, further, that the plaintiff in reconvention has no right to stand in judgment in this case.

Objection overruled as going to the effect. Bill of exceptions reserved.

A. I have no idea. I don't know but what they are there now.

Q. Mr. Fisher, was the printing press and apparatus in such a condition that it could have been taken down and removed, or was it necessary to keep them in the building where they had been?

A. I don't know, sir.

Q. That you can't say?

A. No, sir.

By Mr. MERRICK:

Q. Mr. Fisher, there has been a document offered in evidence here which you have testified to as containing the signatures of the stockholders. Will you state if you saw those signatures when they were put on there.

A. I did, sir.

Q. On both of those petitions, on both those documents?

A. Yes, sir.

Q. Now, as a matter of fact, weren't those signatures put on those

documents after the suit had been filed by the Remington Paper Co.?

A. Part of them, I expect, were and part of them were not.

Q. Do you mean to say that this petition was sent out by you? Do you not know that the proceedings were taken in the civil dist. court before any petition was handed to you?

70 A. I can't say about that certainly.

Q. Do you not know as a matter of fact that an attachment had been filed in the U. S. court before any signatures had been put to this document?

A. I am not so certain about that. It was about that time.

Q. How do you remember so well if you don't remember the time? How do you know these men all signed that thing in your presence?

A. Because I took the petition around and got the signatures.

Q. When did you take the petition around to get the signatures?

A. I didn't keep the dates.

Q. Do you deny that you took it around after the attachment proceedings entirely?

A. No, sir; I don't deny it.

Q. Is it not a fact that these signatures were gotten after the attachment, in order to bolster the defendant's case?

A. I don't know what purpose it served to bolster up this case, I am sure.

Q. Do you know what other object they had in getting these signatures?

A. I did not ask. I was requested to get these signatures.

Q. But you are certain it was after the proceedings had been filed by the Remington Paper Co.?

A. I think so.

Q. This paper was prepared by Mr. Garland, was it not?

A. Yes, sir.

Q. Both documents?

A. Both documents are written by him.

Q. How does it happen that there are two of them?

A. There was another petition taken out by another party.

Q. And yet you swear you saw the signatures taken to

71 both of these petitions, did you not?

A. I saw them taken to one petition.

Q. Didn't you answer a while ago that you saw these people themselves sign these documents?

A. I saw them sign the one I took out.

Q. Well, you didn't see them sign the one you didn't take out?

A. Not the one I didn't take out, I didn't see them sign.

Q. Who took the other document out?

A. Mr. Hereford.

Q. Wasn't he an employé of Mr. Watson with you?

A. Yes, sir.

Q. You two were Mr. Watson's employés?

A. Yes, sir.

Q. And you are yet, are you not?

A. No, sir.

Q. Were you not employed by Mr. Watson after the attachments were filed in this case for some purpose?

A. Yes, sir.

Q. Which one of these documents did you see signed, the first one or the second one?

A. The one headed by J. W. Watson.

Q. Or the one headed by Augustus Craft?

A. The one headed by Augustus Craft.

C. HARRISON PARKER sworn for plaintiff.

Direct examination by Judge MERRICK:

Q. Mr. Parker, have you given testimony already in this case?

A. Yes, sir.

Q. Are you acquainted with the handwriting of Mr. Garland?

A. No, sir; not very well.

72 Q. Have you ever seen him write?

A. Yes, sir; but I don't remember when.

Q. Look at that petition marked filed May 17, 1893.

It is admitted that the petition was filed on the 17th of May, 1893, by Frank H. Pope, and that the petition and the order of the court thereon is in the handwriting of Mr. H. L. Garland, Jr.

Q. Look at that and state in whose handwriting that is—the intervention of the attorney general, filed May 18th, 1893.

A. I don't know, sir.

It is admitted to be in the handwriting of Mr. Garland, the attorney for the defendants in this case.

Q. Will you look at that book? (The witness shown book marked Minutes of the Louisiana Printing and Publishing Company, Limited.) Who was the secretary of the company at the time this book was kept?

A. I was.

Q. Look at the paper attached to page 61 and state in whose handwriting the written portion of it purports to be.

A. It is *in* typewritten, the top of it.

Q. Is that authentic or is it spurious?

A. It is authentic, signed by the commissioners of the election.

Q. You think that is a proper document belonging to the corporation?

A. Yes, sir. It was furnished to me as secretary, and I put it in the book. It was signed by the commissioners of election. The commissioners of election handed me that document, and I attached it to the book.

Q. This document, then, is genuine?

A. Yes, sir.

Q. There is no reason to doubt it?

A. No, sir.

73 Judge Merrick offers and introduces in evidence the paper referred to, marked P 1.

Q. Witness is shown page 62 of the minutes. The document purporting to be a copy of the minutes of that date is shown witness, and he is asked whether that is correct or not.

A. If these are the correct minutes of the proceedings of that day?

Q. First answer if they are the minutes of that date.

A. Yes.

Q. Now, the question is, is this document purporting to be a copy of that a copy?

A. I don't know, sir; I would have to go over it and compare it word for word.

It is admitted that the copy referred to is correct.

Judge Merrick offers and introduces in evidence the copy referred to, marked P 2; also offers a copy of the resolution appointing Mr. Rousseau, dated January 30th, 1893, marked P 3.

Q. Examine this document and say if you recognize it and if there was any original of that.

A. That is not a copy or the original document, because it says "tutor" in there, and there is no such thing as a tutor in the corporation. I suppose that must be for the directors to continue the maintenance of the paper; it says tutor there.

Mr. Garland asks the object of this testimony.

By Judge MERRICK: The object is to place before the court all the facts in reference to this institution, from which we expect the court will apply the law whether the plaintiff's action is to be maintained as charged as part of the facts.

Judge Merrick offers and introduces in evidence the document above referred to, marked P 4; also offers and introduces in evidence a resolution of the board of directors of the 20th of June, 1892, marked P 5; also a resolution of May 1st, 1892, marked
74 P 6; also a resolution of the 27th of August, 1892, marked P 7; also a resolution of the 29th of August, 1892, marked P 8; also a resolution of September 27th, 1892, marked P 9; also a resolution of October 1st, 1892, marked P 10.

Q. Will you look at this book and state at what page entries were made in your handwriting as secretary of the Delta Company?

A. These last are all in my handwriting, from page 56 on.

Q. Were all these written at the same time, all these resolutions?

A. You mean written in this book?

Q. The same day.

A. I don't remember.

Q. What resolutions were written on the 16th day of May, 1893?

A. This resolution of the board meeting was written on the 16th day of May, as soon as the meeting was over; it was written up soon afterwards.

Q. Any other written that day?

A. I don't remember whether there were any more written. These minutes were written up and signed, I admit.

Q. Were you acquainted with the petitioner in this suit, Frank H. Pope?

A. Yes, sir.

Q. Was he employed by the Delta Company?

A. Yes, sir.

Q. At what time was he employed by the Delta Company?

A. I don't remember exactly now; he had been there for a considerable time—a year or two.

Q. In what capacity was he employed?

A. He was solicitor and traveling man.

Q. What compensation was given Mr. Pope?

A. I have forgotten exactly now; I think the books will show that.

75 Q. How long did he remain in the employment of the Delta Company?

A. I don't remember. I think a year or a year and a half. I don't remember exactly. He was there a long time.

Q. Was he employed up to the close of the business of the Delta Company?

A. Yes, sir.

Q. What was your employment, Mr. Parker?

A. I was the auditor and manager of the paper.

Q. What is Mr. Watson's employment?

A. He was not employed there at all.

Q. Does he do business—I asked you what is his employment?

A. What is his employment?

Q. Yes, sir; what is his employment, and what was his employment with you?

A. He is chief deputy tax collector of the first district in my office. He had been there for seven years.

Q. What did you say his employment in your office was?

A. Chief deputy tax collector.

Q. Your office, then, is that of State tax collector?

A. Yes, sir.

Q. Of a certain district in New Orleans?

A. Yes, sir.

Q. Mr. Watson had been in your employment for seven years?

A. Yes, sir; over seven years.

Q. Was he in your employment in 1893?

A. Yes, sir.

Q. When were you elected secretary of the Delta Company?

A. When it was first organized.

Q. I observe that you wrote the minutes of that company from page 56. Who wrote the minutes prior to that date?

A. I don't know without looking at the book.

76 Q. (Witness handed the book referred to.) Please take the book.

A. I don't know very well; it seems to be copied in there by sev-

eral parties. I would write them out in rough and have them copied, and I would sign them.

Q. Do you remember who was treasurer of the corporation?

A. I don't remember.

Q. Was Mr. Greely ever treasurer?

A. I don't think there was any treasurer. You mean an officer of the corporation?

Q. I mean an officer of the corporation.

A. Not for that office.

By Mr. GARLAND:

Q. Was not Mr. Brousseau the treasurer for a while, Mr. Parker?

A. I think so. I don't remember about it now that he was treasurer. The minutes will show. I don't know. He was elected if there was one.

Q. Did Mr. Brousseau lend money to the corporation?

A. Yes, sir.

Q. How much money did the corporation owe Mr. Brousseau at the time of its close on the 16th of May, 1893?

A. I don't know.

Q. Did it owe him anything?

A. I think the books will show that.

Mr. Garland asks what is the object of this evidence.

By Judge MERRICK: I want to show the precise condition of the corporation at the time we sued out this attachment.

By Mr. GARLAND: Do you mean to prove that it was insolvent? If so, I will admit that.

By the WITNESS: I don't know anything about those books or even whether that is a book of the concern. I never kept them

77 By Mr. GARLAND: I object unless counsel can state some relative purpose to be subserved. The court permits counsel to go into the question for the purpose of showing that an undue preference was given by the company.

By the WITNESS: I don't know anything about these books; I am not a book-keeper, Mr. Merrick, and I can only say according to those books, this book, he appears to have been a creditor of the corporation. I am not a book-keeper and never kept the books.

Q. Don't it show that he has been paid?

A. No, sir; it shows that he was a creditor here and was not paid anything for some little time before the close.

By Mr. MERRICK:

Q. How long before the close, Mr. Parker?

A. December, 1892—December 23rd, 1892. The concern closed, I think, in June, 1893.

By Mr. GARLAND:

Q. In May?

A. In May.

By Judge MERRICK:

Q. You say the company was indebted to Mr. Brousseau at the time it closed?

A. Yes, sir.

Q. How much?

A. I don't know. That balance footed up there in pencil seems to be about seven thousand dollars.

Q. Now, were you indebted to him anything like that amount?

A. I don't know anything about that part of it; that is what that book shows; from other information than that, I am positive they owed him that, and more too.

By Mr. MERRICK:

Q. You say from other information you are positive that we owe him that, and more too?

A. That is my recollection of it.

78 Q. How much more? That is what we want to get at.

A. I don't know.

Q. About how much altogether did they owe Mr. A. R. Brousseau or whoever Mr. A. R. Brousseau represented?

A. I don't know.

Q. Do you know of your own personal knowledge whether Mr. Brousseau stood for himself or somebody else?

A. How do you mean?

Q. This account was kept in Brousseau's name. Was this Mr. Brousseau's individual money?

A. Oh, I don't know, I presume it was.

Q. That is your presumption and your belief?

A. Yes, sir.

By Judge MERRICK:

Q. What collaterals were placed in Mr. Brousseau's hands?

A. At what time do you mean?

Q. During the progress of the Delta Company; during the time you were carrying on business.

A. There was a business arrangement with him.

Q. Well, I asked you the question, what collaterals were put in his hands?

A. I don't know exactly.

Q. Well, who made this loan with Mr. Brousseau?

A. The board of directors, by the resolution on the minutes there. They were authorized to get the money to carry on the concern.

Q. Well, who made the loan; who handed over the collaterals to him?

A. There were no collaterals that I know of. He advanced the money to run the paper there. When they were short of money he advanced the money to pay off according to that book there.

Q. What I ask you — according to your own knowledge, not according to that book.

79 A. I can't state that because it was a matter of details connected with the book-keeping department, which I had nothing to do with.

Q. Well, do you say that any collaterals were handed over to Mr. Brousseau?

A. I don't know.

Q. If any collaterals were handed over, do you know what was done with them?

A. I don't know that there were ever any collaterals to turn over to him.

Q. If any were handed over to him, what was done with them?

A. I don't know that any were ever handed over to him.

Q. I didn't ask you that, but I asked you if there were, what was done with them?

A. I don't know.

Q. Towards the close of the management of that concern, who were the men that managed—three men who were the committee, or whatever it was, that managed—the affair up to the time of its official winding up?

A. It was managed by the board of directors.

Q. Was it not at one time submitted to three of the board of directors as a board of managers, towards the close of the affair?

A. No, sir; the management remained under the board of directors. Under the charter there was a committee appointed. With reference to the document there, there was a committee appointed. Get that last document to which you referred—there was a committee of directors who were getting as much of the stock transferred to Mr. Brousseau as possible. That was a mere arrangement between
80 the stockholders for them to turn over their stock to Mr. Brousseau to keep the paper going as long as it could; that was a thing done between the stockholders and not the board of directors; that was a committee of the stockholders; they might have been members of the board also, but it was a committee of the stockholders. That stock which they were to turn over to Mr. Brousseau was not the property of the corporation, but of the individual stockholders.

Q. Weren't the affairs of the corporations left to the management of three gentlemen some time before the dissolution on the 16th of May, 1893?

A. Not that I remember of.

By Mr. GARLAND:

Q. Mr. Parker, what was the course of the officers of the company when they found out the condition—found out the condition at the collapse of this company? Did they stick to their corporate offices or resign?

Mr. Merrick objects on the ground that the best evidence is the minutes.

Q. Have you perceived any indication on the part of the officers

of the board of directors to give an unfair preference to any of the creditors?

Same objection. Same ruling. Same bill of exceptions.

A. No, sir; I don't know of any such intention.

Q. There was no indication on the part of anybody that you know of to perpetrate a fraud on any other creditor?

Same objection. Same ruling. Same bill of exceptions reserved.

A. I don't know of anything.

Q. Mr. Parker, you are a business man and an accurate observer of events in 1893. Was there a financial panic around that year; and, if so, when did it become acute?

Mr. Merrick objects on the ground as being irrelevant and inadmissible under the pleadings; that the petition in reconven-
81 tion discloses no cause of action, and that John W. Watson, individually or as receiver, is without right to stand in judgment. Same ruling and same bill of exceptions.

Q. I asked you if there was not a financial panic in 1893, and, if so, when did it become acute.

A. Yes, sir; there was a panic that year. I think it was about the month of September—August or September.

Q. Was the printing press and apparatus of the Louisiana Printing and Publishing Company susceptible of being dismantled and stored away?

A. Well, it could have been moved.

Q. Well, would it have destroyed its value in a large measure?

A. It would have been better to have sold it right where it was, without breaking it up and mixing up the type, etc.

Q. Was it necessary to retain one of the buildings where the press was in order to preserve it, pending this litigation?

A. Yes.

Q. Was there any collusion or fraud on the part of Mr. Watson with any of the officers of the company that you know of?

A. There was none.

Same objection, same ruling, same bill of exceptions.

Q. Did Mr. Watson have anything to do with any payments made to Mr. Frank H. Pope while he was in the employ of the company?

A. At what time?

Q. Prior to the time of his being appointed receiver.

A. He had nothing whatever to do with the party.

Q. Was not connected at all?

A. No, sir; nothing at all.

Q. Mr. Watson was a stockholder?

A. Well, he may have been a stockholder, but I mean con-
82 nected with its affairs.

By Mr. MERRICK:

Q. How many shares had he?

A. I don't know, sir.

By Mr. GARLAND:

Q. Mr. Parker, was Mr. Brousseau in any way given a preference over any other creditor of this company in its liquidation or settlement of his account with the company?

A. At what time do you mean?

Q. At any time prior to the appointment of the receiver.

A. Mr. Brousseau was not paid.

Q. He was not paid?

A. According to the books there, we were indebted to him at one time. He took up a note there for a printing press and was substituted to the lien and privilege which the vendor had on it for paying the obligations of the company.

Q. These transfers of stock made to Mr. Brousseau were made by the various stockholders at the time for the purpose of enabling him to raise money to run the paper?

A. That was a mere arrangement among the stockholders to turn over to Mr. Brousseau their personal shares owned by them and not owned by the company.

Q. Was that in any sense a diversion of the company, of the property of the company, to Mr. Brousseau?

A. These were shares of individuals the company had nothing at all to do with.

By Judge MERRICK:

Q. Mr. Parker, how about the size of the printing press there that the Delta had; was it an unusually large size?

A. No, sir.

Q. Medium size or small size?

83 A. Well, it was a medium-size press set upon a brick foundation.

Q. Are those presses usually placed or kept before sale by the vendors; are they not capable of being put in storehouses, warehouses, or other places?

A. Yes, sir.

Q. Couldn't this have been removed and stored somewhere?

A. The press; yes, sir; it could have been.

By Mr. GARLAND:

Q. At what cost could that have been done, Mr. Parker, about?

A. Well, to have taken the press down and packed it up in boxes, all the parts, and preserved them, would have involved considerable expense.

Q. Have you any idea about what would be the cost of dismantling a press of that kind?

A. No, sir; I can't tell. There are a great many pieces of machinery and they would have to be carefully boxed and housed, and the type would all have to be packed very carefully. It is a movable thing, though; it could have been moved.

By Judge MERRICK:

Q. This type occupied a large space?
A. Yes, sir.
Q. How many square feet would the type of that concern fill—how many cubic feet?
A. Pretty nearly fill this room, I suppose—that is, the floor surface; it is spread out in cases.
Q. When the cases are spread out they would occupy a space?
A. Yes, sir; all the type is distributed in cases. As it comes from the factory, it is not very bulky.
Q. Could not all that be stored in no very great space?
A. Yes, sir; they could all be packed and stored away.

Mr. A. A. WOODS sworn for plaintiff.

84 Direct examination by Mr. MERRICK:

Q. Mr. Woods, you were one of the directors of the New Delta?
A. Yes, sir.
Q. When did your authority there cease?
A. I can't remember the date now; during the summer or fall of 1892—that is, it sort of ceased of its own accord. We were not able to raise money to keep it going.
Q. Well, what happened when you were not able to get the money?
A. Well, it just quit. I have no recollection of any formal action in regard to it. We were unable to pay the employés any longer and it was obliged to stop.
Q. Did you ever take any formal action individually?
A. I did in soliciting funds.
Q. I mean in regard to severing the connection of the New Delta in any way?
A. No, sir.
Q. What became of the power that was vested in the board of directors?
A. It ended when they quit acting. I don't remember that the company was ever formally dissolved.

By Judge MERRICK:

Q. Mr. Woods, what were the number of stockholders; have you any idea?
A. Well, I have no idea now. There are a great many and the shares were only $12.50 each, and I don't remember now the amount of stock that was subscribed; a good many shares were held out throughout the State in different points.
Q. Whereabouts were those stockholders mostly resident?
A. Most of them in the city of New Orleans.
Q. Well, where else did they reside?
A. Many of them in north Louisiana and quite a number
85 out through the sugar district, scattered all over the State in different parts.

Q. Who was the treasurer of the corporation?
A. I can't remember that.
Q. Was Mr. Greeley ever the treasurer?
A. I think he was, but I am not certain about that.
Q. What office did Mr. Brousseau hold?
A. No office.
Q. Didn't he hold an office towards the last?
A. Not that I remember; all that I remember in relation to Mr. Brousseau he several times advanced money to us on our pledging the weekly collections of the paper.
Q. What position did Mr. Frank H. Pope hold there?
A. I have no recollection of Mr. Pope at all. I didn't even remember his name when I heard it mentioned here this morning.
Q. You have no recollection of him; then, of course, you have no recollection of the commission that he got?
A. No, sir.
Q. Do you know the other officers there that were employed in the concern?
A. I remember we had a manager brought there from Kansas City, who was recommended to us as a very capable man, very capable newspaper man, but I don't remember his name. I believe that was Mr. Greeley.
Q. Then he was the manager, not the treasurer?
A. No, sir; he was not the treasurer; he was the business manager.

By Mr. GARLAND:

Q. Mr. Woods, as a member of the board of directors, did you at any time notice any indication on the part of any officer or member of the board of directors to give an unfair preference to any of the creditors of the Delta?
86 A. No, sir; I don't believe there was.
Q. So far as you could observe, in what way were the affairs of the company managed, to the best of your knowledge—honestly?
A. Perfectly honestly. I don't think there was any member of the board of directors — had any motive in defrauding anybody.
Q. Do you know Mr. Watson?
A. Yes, sir.
Q. Was he connected with the paper in any way prior to being appointed receiver?
A. No, sir.

By Judge MERRICK:

Q. Suppose any of the directors had any intention of benefitting some particular person or managing the concern for the benefit of some particular person or individual, had you such a knowledge of the affairs of the concern that you would have known it?
A. I think so. I don't think any one would have ventured that way without the sanction of the board of directors, and I know there was no proposition of that sort made to the board or in the

presence of the board. I think I would have heard of it if there had been.

Q. Suppose some one had desired to pay this or that debt, would you have had sufficient knowledge of the law to know whether he had the authority or not?

A. I suppose the treasurer, whoever he was, might have paid a claim of that kind, but he would have run the risk of detection, and I think he would have been severely handled by the board if he had done it.

Q. How much of your time did you spend there, at the establishment, Mr. Woods?

A. I think the last year of the concern I averaged two
87 hours a day about three times a week.

Q. Would you be likely to know all that happened after the determination of an abandonment of the concern after you quit going there, Mr. Woods?

A. No, sir; I don't think I would; I don't think that I would.

It is admitted by counsel representing Mr. John W. Watson that Mr. Frank H. Mortimer, a notary public who took the inventory in this case, acted merely under the order of court, rendered on May 17th, 1893, and annexed to the application for the appointment of a receiver filed in this case on behalf of Frank H. Pope. It is also admitted that if Mr. Bloomfield were present he would corroborate the testimony of Mr. Woods.

Plaintiff rests.

Certificate of Election April 19th, 1893, Marked P "1."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Division "A," Civil District Court, Parish of Orleans.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

The New Orleans Delta.

NEW ORLEANS, *April 19th*, 1893.

Louisiana Printing and Publishing Company, New Orleans.

DEAR SIRS: We, the undersigned commissioners, beg leave to make the following report:

After opening the poll at ten o'clock this morning and keeping the same open until three, we have counted the ballots
88 therein deposited, and report that there have been cast for the following-named persons the number of votes set opposite to their names.

We therefore certify that the following-named stockholders have

been duly elected directors of your company until their successors are legally qualified:

James D. Hill.
John Dymond.
Nathan Greely.
James D. Coleman.
C. Harrison Parker.
Henry McCall.
E. J. Hart, Jr.
I. H. Stauffer, Jr.
A. A. Woods.
Stanley O. Thomas.
Charles Parlange.
A. R. Brousseau.
F. I. Clippen.
Branch M. King.
W. B. Bloomfield.
J. M. Foster.
F. H. Harris.
R. B. Scudder.
W. G. Vincent.
R. H. Lea.

} Twenty-five hundred & forty-eight votes.

In witness whereof we hereunto sign our names this 19th day of April, 1893.

(Signed) TINIS H. HARRIS,
LEE PUTNAM,
S. H. TANEY,
Commissioners.

In red ink:
N. O., July 13, '96.
(Signed) T. C. W. ELLIS.

89. *Minutes of May 16th, 1893, Louisiana Printing & Publishing Company.*

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100. Division "A."

Minutes of the board, May 16th, 1893, p. 63, 10.30 a. m., Tuesday, at 41 Natchez St.

The board met pursuant to call.

Present: Messrs. Hill, Woods, Lea, Crippen, Thomas, and Parker; Pres. Hill in the chair; Parker, sec'y.

After being called to order a recess was taken till 1 p. m. to give the secretary time to prepare the minutes of the previous meetings.

On reassembling the minutes of all meetings since June 20th, 1892, were read and approved.

Pres. Hill stated the situation of affairs and events transpired since last meeting and opinion of attorneys relative to legal points.

Moved by Mr. Lea that Mr. Henry L. Garland, Jr., be employed to act as attorney to represent the corporation.

The resignation as directors of the following parties was tendered in writing and placed on file with the secretary:

Nathan Greely, R. B. Scudder, J. M. Foster, of Shreveport; A. R. Brousseau, also as treasurer; Branch M. King; Henry McCall, of Ascension; W. G. Vincent, Charles Parlange, E. J. Hart, Jr., I. H. Stauffer, Jr., J. B. Bloomfield, James D. Coleman.

On motion of Mr. Lea, seconded by Col. Woods, their resignations were received and accepted.

There was then presented to the board the written resigna-
90 tion, as directors and officers of La. P. & P. Co., of F. I. Creppin, S. O. Thomas, R. H. Lea, A. A. Woods (as vice-president and director), C. Harrison Parker (as secretary and director), Jas. D. Hill (as president and director).

Said resignation to take effect at 4 o'clock p. m., this the 16th day of May, 1893. On resolution, duly seconded, their resignations were received and accepted.

Upon motion, the board adjourned *sine die*.

The minutes of the meeting were then written up by the secretary and read and approved by the secretary and president at once.

(Signed) JAS. D. HILL, *Pres.*
" C. HARRISON PARKER, *Sec'y.*

Compared.
PHILIP GENSLER, JR.

In red ink:
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Minutes of May 1st, 1892, Louisiana Printing & Publishing Company.

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Minutes of the board, May 1st, 1892, p. 62.

The board met, pursuant to call, at 41 Natchez St., Pres. Hill in the chair.

Present: Messrs. Scudder, Hill, Woods, Hart, and Parker, sec'y.

On motion of Mr. Scudder, the election of officers was postponed for the present, the old officers to continue till said election.

Pres. Hill stated, in brief, the financial condition of the company, which was such that it was unable to pay the pay-roll
91 due this week. He stated what had been done to carry the paper on for the past year or so and the failure to secure more capital to conduct the business.

Mr. Scudder offered the following, which was duly seconded and adopted unanimously:

That the president and secretary be authorized and empowered with full authority to make such arrangement concerning the future conduct of the Delta newspaper or dispose of the property of the corporation as they might think best.

The meeting then adjourned.

(Signed) JAS. D. HILL, *Pres.*
" C. HARRISON PARKER, *Sec'y.*

Compared.
(Signed) PHILIP GENSLER, JR.

In red ink:
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Petition of the Memphis Commercial and of A. W. Hyatt Stationer- and Manufacturing Company, Limited.

Filed May 18th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

The petition of intervention of The Memphis Commercial Publishing Co. — of the A. W. Hyatt Stationery & Manufacturing Co., Ltd.

Respectfully represent that they are creditors of said Louisiana Printing & Publishing Company, Limited.

That your petitioners believe & aver the facts to be as stated in the original petition herein.

92 That it is necessary in *owner* to protect the interest of all parties concerned, both stockholders & creditors, that a receiver or liquidator to said corporation should be at once appointed by this court.

Wherefore petitioners join in the prayer of the original plaintiff, and urge upon the court the necessity of taking action at once.

(Signed) WM. K. HORN,
Att'y for Memphis Commercial Claim, $900.00.
(Signed) A. W. HYATT STA. MFG. CO.,
LTD., $71.45.

Order Annexed to and Made Part of Petition of Intervention.

Let this petition of intervention be filed according to law.
New Orleans, May 18th, 1893.
(Signed) T. C. W. ELLIS, *Judge.*

Mr. C. Harrison Parker's Letter, Marked "P 1."

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

THE NEW ORLEANS DELTA,
NEW ORLEANS, LA., *May 2nd*, 1893.

The Remington Paper Co., Watertown, N. Y.

GENTLEMEN: One of your notes for $751.79 falls due on the 6th of May. We may not be able to pay it, and would ask of you not to have it protested. Our affairs are not in good shape, but we are 93 endeavoring to reorganize and put the paper in position to go on.

We have met our obligations to you promptly, and if on the 6th day of May we can ask you for an extension on that note we will do so; otherwise we will leave you free to protect your interests.

We are doing our best and will act fairly with you.

Trusting to hear from you at your earliest convenience, we remain

Yours truly, THE NEW ORLEANS DELTA.
(Signed) C. HARRISON PARKER,
Per JNO. E. McDONALD.

(Written with red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Extract from the Journal Showing the Payments to Frank H. Pope on the 15th of May, $89.50, and on the 17th May, $260.84.

Offered in Evidence by Counsel for Plaintiff.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

		(In red ink.)
Sundries Dr. to cash	1,162.12	104
For cash disbursed week ending May 20, '93—		
Bills payable Nov. 21, '91, dev'd	400.00	31
Frank H. Pope, May 15	89.50	94
Do., " 17	260.84	"
C. H. Parker	16.00	70
Stereotype ac	20.00	110
94		(With red ink.)
Advertisement ac	22.83	120
Sales ac	8.98	116
Commissions	62.65	114
Expense ac	10.95	99
Commissions	.97	114
Telegrams	6.50	55
Postage & expressage	3.40	61
Pay-roll, Ap'l 29, '93	54.00	358
Do., May 6, '93	85.00	359
Do., " 13, '93	63.50	"
Do., " 20, '93	27.00	"
Correspondence	30.00	118

Resolution Appointing Mr. Brousseau, Marked "P3."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Parish of Orleans, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Minutes of the board, January 30th, 1893, p. 58.

The board met at 41 Natchez St. at 3.30 p. m., as per call, Pres. Hill in the chair.

Present: Messrs. Hart, Brousseau, Harris, and Parker, sec'y.

Col. Hill stated that, Mr. Greely having left the city for an indefi-

nite period, it was necessary to elect a treasurer in his place and tendered Mr. Greely's resignation.

On motion, Mr. A. R. Brousseau was elected to fill the vacancy and without bond.

The meeting then adjourned.

(Signed) JAS. D. HILL, *Pres.*
" C. HARRISON PARKER, *Sec'y.*

95 (Written with red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Compared.
(Signed) PHILIP GENSLER, JR.

Copy of Minutes Marked "P 4."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Copy from loose sheet.

The undersigned, a committee duly appointed to investigate and report in the affairs of the New Delta, after having made a careful examination and with a desire to serve the interest of the anti-lottery cause by securing a continuance of the existence of the paper management, recommend that the stockholders transfer there stock to Col. J. D. H. as agent, by him to be retransferred to those (in interest) or those who have agreed to supply the funds for the (directors) to maintain the existence of the paper.

We will gladly furnish any further and detail- information to stockholders.

The members of this committee, the undersigned, are all stockholders in the paper, and have all transferred their stock to Col. H. M.

(Signed) WM. G. VINCENT, *Chairman,*
" R. B. SCULDEN,
" W. B. BLOOMFIELD,
" A. A. WOODS,
96 (Signed) E. J. HART, JR.,
Committee of Board.

(Written in red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Compared.
(Signed) PHILIP GENSLER, JR.

Resolution of the Board of Directors, Marked "P 5," of the 20th of June, 1892.

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Extract from part of the minutes of the board, Monday, June 20, 1892, offered in evidence by counsel for plaintiff.

Therefore be it resolved, That there be, and is hereby, constituted an executive committee composed of Stanley O. Thomas, A. R. Brousseau, and J. D. Hill.

That said committee shall have the following powers, to wit:

1st. The full and absolute control of all the business affairs of the corporation.

2nd. The full and absolute control of all the expenses to be incurred by the corporation, of the plan of operation, of all pay-rolls to be incurred, of all bills to be incurred or contracts to be made, and of all and everything, matter, or thing done or to be done in connection with the business of said corporation.

The said committee be, and the same is hereby, constituted as express and special representative of this board, with full power to do all acts and things which might be done by this board.

The said committee being authorized to prevent any and
97 all expenditure which they may deem not advisable, and in all things to represent this board and control absolutely and entirely the business of the corporation.

That the members of said committee be, and they are hereby, authorized in the event of the absence of either of them to give a proxy to a personal representative to attend the meetings of said committee and act for him as a member of said committee.

Mr. Woods moved the adoption of the resolution; which motion was duly seconded, and the resolution was unanimously adopted.

Col. Vincent tendered his resignation as a member of the board, which resignation was accepted; *t*hereupon Mr. King nominated, as a member of the board to fill the vacancy caused by Col. Vincent's resignation, Mr. A. R. Brousseau. The nomination having been put to the meeting, Mr. Brousseau was unanimously elected.

The resignation of Mr. I. H. Stauffer, Jr., as a member of the

board, was offered, and on motion of Mr. Greely, duly seconded, Mr. F. J. Cuppen was elected a member of the board.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres.*

Compared.

PHILIP GENSLER, JR.

(Written in red ink :)

N. O., July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Resolution August 27th, 1892, Marked "P 7."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

98 Minutes of the board, August 27th, 1892, p. 51.

The board met, pursuant to call, at 11 a. m., 41 Natchez St.

Present: Messrs. Woods, Bloomfield, Coleman, E. J. Hart, Jr.; Harris, Greely, and Parker, sec'y. Col. Woods was called to the chair.

The minutes of the previous meeting were read and adopted.

On motion, the meeting adjourned till 12 m. Monday.

(Signed) A. A. WOODS, *Acting Pres.*
" C. HARRISON PARKER, *Sec'y.*

Compared.

(Signed) PHILIP GENSLER, JR.

(Written with red ink :)

N. O., July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Resolution August 29th, 1892, Marked "P 8."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Minutes of the board, Monday, August 29th, 1892, p. 52.

The board met at 41 Natchez St., 12.30, pursuant to adjournment, and adjourned till 4 p. m. same day.

Present: Messrs. Harris, Greely, Parker, Hart, Jr., and Bloomfield.

At 4.30 met according to adjournment. Messrs. Bloomfield, Hart, Parker, Greely, and Woods present; Col. Woods in the chair; Parker, sec'y.

On motion of Mr. Bloomfield, duly seconded, and put by the secretary, Col. Woods was elected vice-president.

On motion of Mr. Parker, duly seconded by Mr. Bloomfield, the following was adopted:

99 Resolved, That in the absence of the president of this corporation his place shall be filled and his duties performed by the vice-president, who shall execute and sign all contracts and obligations of the corporation and shall have the same powers and functions as the president, and shall in all matters represent and act for the corporation the same as the president when present.

On motion of Mr. Parker, seconded by Mr. Bloomfield, the following resolution was unanimously adopted, viz:

Resolved, That this board now ratifies, approves, and confirms, in every particular, the following contracts entered into on behalf of this corporation on August 5th, 1892, and on August 11th, 1892, viz:

1st. The contract whereby this corporation borrowed from A. R. Brousseau the sum of eight hundred and ninety-two and $\frac{6}{100}$ dollars ($892.06) in order to pay the company's note for eight hundred and fifty-four dollars ($854) to the Gross Printing Company, dated November 2nd, 1891, and payable nine months after date, with interest, and subrogate the said A. R. Brousseau to the rights, actions, and privileges securing said note; all as per act of August 5th, 1892, before G. C. Preot, notary public, which has been submitted to and approved by the board.

2nd. Two contracts of date August 11th, 1892, whereby this company pledged certain of its movable property to A. R. Brousseau to secure him against liability from endorsements made and to be made by said Brousseau on behalf and for the benefit of this company; all as per acts of August 11th, 1892, before Geo. C. Preot, notary public, which have been submitted to, imparted, and approved by this board.

On motion of Mr. Bloomfield, duly seconded by Mr. Parker, the following resolution was unanimously adopted:

100 Resolved, That the president of this corporation be, and in his absence the vice-president is, authorized, in order to raise money for the purpose of the corporation, to issue the promissory pledged notes of the corporation to the aggregate amount of three thousand dollars, and to secure the same by pledge of any outstanding accounts or indebtedness due this corporation, and to execute the necessary acts of pledge.

On motion of Mr. Parker, seconded by Mr. Greely, the following resolution was unanimously adopted:

Resolved, That the president or vice-president be authorized to give promissory notes of the company in payment for the type pur-

chased from Barnhart Bros. and Spindler, at thirty, sixty, and ninety days.

At thirty days, $767.92; at sixty days, $767.92; at ninety days, $767.93; the notes to bear interest at six per cent. from date till paid.

(Signed) A. A. WOODS, *V. P.*
" C. HARRISON PARKER, *Sec'y.*

Compared.
(Signed) PHILIP GENSLER, JR.

(Written with red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Resolution September 17th, 1892, Marked "P 9."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Minutes of the board, September 17th, 1892, p. 56.

The board met at 4 p. m., pursuant to call, at 41 Natchez St.
101 Present: Vice-President Woods in the chair, and Messrs. Hart, Bloomfield, Greely, and Parker, sec'y.

The following resolution was offered by Mr. Bloomfield, seconded by Mr. Hart, and adopted:

Resolved, That the president, and in his absence the vice-president, be authorized to issue the notes of the company for money necessary to the conduct of the business, and that the power be given to pledge the bills and other assets of the company to secure the payment of such notes.

Adjourned.

(Signed) A. A. WOODS, *V. P.*
" C. HARRISON PARKER, *Sec'y.*

Compared.
(Signed) PHILIP GENSLER, JR.

(Written with red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Resolution October 1st, 1892, Marked "P 10."

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Minutes of the board, October 1st, 1892, p. 57.

The board met at 11 a. m., pursuant to call, and adjourned over till 4 p. m., at 41 Natchez St.

President: Col. Hill, Messrs. Greely, Woods, Harris, and Parker: Col. Hill in the chair.

The following offered by Mr. Greely and seconded by Mr. Woods:

Whereas the Louisiana Printing & Publishing Co. has issued to Barnhart Bros. & Spindler three notes of $767.92, each due in 30, 60, and 90 days, for type and printing material purchased
102 by said company, the said notes being endorsed by A. R. Brousseau, and the company is unable to pay the same at maturity:

Be it resolved, That the president is authorized to sign any acts of subrogation to all the rights and privileges of the vendor transferred to Mr. A. R. Brousseau.

Unanimously adopted.

Col. Hill reported that papers had been served upon him in the suit of Beutsun *vs.* La. Pub. & Print. Co. for $20,000 damages for libel. On motion of Col. Woods, the president was authorized to employ Messrs. White, Parlange & Saunders to defend said suit.

The meeting then, on motion, adjourned.

Addition.—On motion, the secretary was authorized to sign rent notes for the property 41 and 43 Natchez St. for the year ending October, 1893.

(Signed) JAS. D. HILL, *Pres.*
" C. HARRISON PARKER, *Sec'y.*

Compared.

(Signed) PHILIP GENSLER, JR.

(Written with red ink)
N. O., July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Letter from James D. Hill to Henry McCall, Dated April 29th, 1893.

Offered in Evidence by Counsel for Plaintiff.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

At the office 41 and 43 Natchez street, on Wednesday, April 19, 1893, the following board was chosen to serve for the ensuing year:

	James D. Hill.	John Dymond.
	Nathan Greely.	James D. Coleman.
103	C. Harrison Parker.	Henry McCall.
	E. J. Hart, Jr.	I. H. Stauffer, Jr.
	A. A. Woods.	Stanley O. Thomas.
	Charles Parlange.	A. R. Brousseau.
	F. I. Crippen.	Branch M. King.
	W. B. Bloomfield.	J. M. Foster.
	F. H. Harris.	R. B. Scudder.
	W. G. Vincent.	R. H. Lee.

JAMES D. HILL, *President.*

C. HARRISON PARKER, *Secretary.*

NEW ORLEANS, LA., *April 29th*, 1893.

Henry McCall, New York city.

DEAR SIR: An important meeting of the new board of directors is called for Monday, May 1st, at 3.30 p. m., at 41 Natchez St., for the purpose of organization and to determine the future of the paper and adjust the financial affairs of the corporation.

Your presence is earnestly solicited.

Respectfully,

(Signed) JAMES D. HILL, *President.*

(Written in red ink:)
N. O., July 13, '96.
(Signed) T. C. W. ELLIS, *Judge.*

Process Verbal of Sale by Placide J. Spear, Auctioneer.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Was sold this day, Saturday, April 28th, 1894, at 10.30
104 o'clock a. m., at public auction, at Nos. 41 & 43 Natchez street between Camp & Magazine streets, by virtue of and in pur-

suance to an order from the Honorable T. C. W. Ellis, judge of the civil district court for the parish of Orleans, dated April 13th, 1894, in the above-entitled matter, the following, to wit:

1 letter-copying press	.50
1 stove & pipe	1.00
1 plain desk stool	.25
1 revolving chair	.75
1 lot shelving	.30
1 mailing table 3½ bundles paper	6.00
1 upright desk	.45
5½ rolls printing paper	5.50
4½ bundles printing ink	10.50
1 iron foundation for press 4 rolls inch tape	1.00
1 wheelbarrow 1 shovel	.75
1 duck cover for press	.75
1 stove, broken chairs, &c 1 box dross	.10
1 p'ce shafting & pulley 1 crane, with chain block & tackle	3.00
1 roller box 1 ladder	.50
	$31.35
2 step-ladders	.75
1 double-cylinder Hoe press	30.00
1 lot lumber	.80
1 lot single & double cuts (about 800)	3.00
105 4 chairs	.40
1 oak desk	2.75
1 broken do	.10
1 rough table & 3 trustles	.45
1 proof-press	7.50
1 lot trash, books	.25
1 double-sitting desk	.75
1 lot old paper	.75
1 lot type cases (245) & types, inch-ding type in boxes	415.00
2 sinks	2.50
4 galley tables	.30
2 lead-cutters	.75
1 small ladder 1 lot gas fixtures & piping in building	3.00
1 proof-press	4.50
1 lot iron flooring	.50
1 galley rack	.10
1 cupboard, zinc-lined drawers	.60
1 cupboard	.10
1 lot stereotyping tools	2.00

4 shooting sticks	.50
1 stand shelving	.10
1 lot cuts, type metal, & dross	12.00
1 lot brass rules	1.50
2 wooden-seat chairs & 1 stool	.90
1 shovel	.10
	$523.30
1 lot firebricks	.10
1 lot old papers	.40
	$523.80

(Signed) P. J. SPEAR, *Auctioneer.*

106 *Judicial Advertisement.*

Hoe double-cylinder press,
News and display types, printing inks, news and wrapping paper,
Furniture, gas fixtures, etc.;

also

Right of occupancy of store No. 41 Natchez street from May 1, 1894, to Sept. 30, 1894.
Sundry shares, stocks, etc.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, LIMITED.

By Spear & Escoffier—Placide J. Spear, auctioneer—office, No. 155 Common street, on Saturday, April 28, 1894, at 10.30 o'clock a. m., will be sold, at No. 41 Natchez street, between Camp and Magazine streets, by virtue of and in pursuance of an order from the Hon. T. C. W. Ellis, judge of the civil district court for the parish of Orleans, dated April 13, 1894, in the above-entitled matter—

The contents of said premises, consisting in part of the hereinbefore-mentioned goods.

Terms, cash. apl 17 21 25 28

Par Spear & Escoffier.

Annonce Judiciaire.

Presse à double cylindre de Hoe,
News and display type, encre pour imprimerie, papiers pour journal et pour envelopper, meubles, installations de gaz, etc., etc.;
aussi
Le droit d'occupation du magas in No. 41 rue Natchez, du 1er Mai 1894 au 30 Septembre, 1894.
Diverses actions, stocks, etc.

107 *Dans re* FRANK H. POPE
vs.
LOUISIANA PRINTING & PUBLISHING CO., LIMITED.

Par Spear & Escoffier—Placide J. Spear, encanteur—Bureau No. 155 rue Commune—Samedi, 28 avril 1894, à 10 heures a. m., il sera vendu, au No. 41 rue Natchez, entre les rues Camp et Magazine, en vertu d'un ordre de l'Honorable T. C. W. Ellis, juge de la Cour Civile de District pour la paroisse d'Orléans, en date du 13 avril 1894, dans la susdite affaire, le contenu des dits lieux, consistant en partie des articles ci-dessus mentionnés.

Conditions—Comptant.

17 av—17 21 25 28.

Process Verbal of Sale by Placide J. Spear, Auctioneer.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Was sold this day, Monday, March 5th, 1894, at 11 o'clock — m., at public auction, at Nos. 41 and 43 Natchez street, by virtue of and in pursuance to a judgment rendered and signed September 19th, 1893, and by virtue of an order dated January 24th, 1894, by the Hon. T. C. W. Ellis, judge of the civil district court for the parish of Orleans, in the above-entitled matter, the following:

1	single standing desk	7.50
1	upright cabinet file	10.00
1	pigeon-hole case	.75
1	caligraph	30.00
4	revolving stools, 1.00	4.00
2	armchairs, 1.30	2.60
1	plain "	.60
1	safe	41.00
	1 clock	3.00
108	11 letter-box files	3.30
	1 city directory	1.40

1	box chromos	6.00
3	waste-baskets, .25	.75
1	lot bound files	3.00
5	folding tables	1.75
1	lot old paper	2.75
1	Nagle upright engine, 12 H. P.	110.00
1	horizontal boiler	150.00
1	push-cart	4.50
1	roller-top desk	24.00
1	Remington typewriter & stand	32.00
1	Smith " "	27.50
13	chairs, .35	4.55
1	revolving chair	4.50
1	paper rack	1.00
1	lot shelving	3.25
6	vols. Appleton's Encyclopedia	5.50
10	" American "	7.00
2	" Officers Who Served in Civil War	3.00
1	table	.60
1	clock	4.25
1	table	.60
1	revolving chair	1.25
7	tables, .45	3.15
1	revolving chair	1.25
1	walnut desk	7.00
1	" "	4.50
4	tables, .35	1.40
1	water-cooler	.10
	1 filter	2.00
109	1 lot envelopes, &c	2.00
	Contents of bookcase	.75
1	scale	5.75
1	lot sundries	.25
1	dictionary	2.25
3	wood-bound double galleys, .80	2.40
36	" single " .35	12.60
21	" " " .35	7.35
3	composing stones	21.75
1	steam table	10.00
1	machinist's vise	1.50
4	dz. sticks, 1.25	5.00
2	shaftings, 2 pulleys, 3 belts	10.50
1	small desk	.65
		$604.05

(Signed) P. J. SPEAR, *Auctioneer.*

Auction Sales.

By Spear & Escoffier.

Judicial Advertisement.

The plant
and
Paraphernalia
of the
New Orleans Delta,
Embracing
Printing presses, boilers, engines, types, office furniture, books, typewriters, etc.

Civil District Court for the Parish of Orleans.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

110 By Spear & Escoffier—Placide J. Spear, auctioneer—office, No. 155 Common street, Monday, March 5, 1894, at 11 o'clock a. m., will be sold at public auction, at Nos. 41 and 43 Natchez street, by virtue of and in pursuance to judgment rendered and signed Sept. 19, 1893, and by virtue of an order dated Jan. 24, 1894, by the Hon. T. C. W. Ellis, judge of the civil district court for the parish of Orleans, in the above-entitled matter—

1 gross Webb press, complete, with stereotyping machine, wetting machine, rollers, etc.

1 double-cylinder Hoe press.

1 Nagel upright engine, 12-horse power.

1 Nagel horizontal boiler, 15-horse power, piping, etc.

4½ barrels printing ink.

Shafting and belting.

5½ rolls printing paper.

Types, stands, cases, galleys, iron safe, office and editorial furniture, typewriters, gas fixtures, books of reference, etc.

Also, at the same time and place, all the open accounts, shares of stocks in various companies, claims, etc., belonging to said company, according to list to be exhibited at the sale.

Terms, cash.

feb 7 14 21 25—td.

Annonce Judiciaire.

L'Établissement et les paraphernaux
du
New Orleans Delta,
comprenant

111 Presse à imprimerie, bouilloires, machines, caractères, d'imprimerie, meubles de bureau, livres, typewriters, etc., etc.

Cour Civile de District pour la Paroisse d'Orléans.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING & PUBLISHING CO., LIMITED. } No. 39100.

Par Spear & Escoffier. Placide J. Spear, encanteur, bureau No. 155 rue de la Commune—Lundi, 5 mars 1894, à 11 heures a. m., il sera vendu à l'encan, aux Nos. 41 et 43 rue Natchez, en vertu d'un jugement rendu et signé le 19th septembre 1893, et en vertu d'un ordre daté le 24 janvier 1894, par l'Hon. T. C. W. Ellis, juge de la Cour Civile de District pour la paroisse d'Orléans, dans la susdite affaire—

1 Presse Webb de Goss compléte avec 1 machine à stéréotyper, writing machine, rouleaux, etc.

1 Presse Hoe cylindres doubles.

1 machine droite Nagle, puissance de 12 chevaux.

1 Bouilloire horizontale Nagle, puissance de 15 chevaux, tuvaux, etc.

4½ barils d'encre d'imprimerie, un arbre de couche et des courroies.

5½ rouleaux de papier à imprimerie, caractères, installations, casses, galées, coffres en fer, meubles de bureau et de salie de rédaction, typewriters, installations de gaz, livres pour référence, etc.

Aussi à la meme heure et place tous les comptes courants, actions de stocks dans différentes compagnies, réclamations, etc., appartenant à la dite compagnie d'après une liste qui sera exposée à la vente.

Conditions—Comptant sur les lieux.

2 fev—2 7 14 21 25 à date.

112 *Minutes of the Board, April 24th, 1890.*

Offered in Evidence by Counsel for Defendant.

The board of directors of the Louisiana Printing and Publishing Company, Limited, named in the charter of said company met at 81 Carondelet street, Thursday, April 24th, 1890, at eight o'clock p. m.

Present: Messrs. James D. Hill, W. W. Vance, James D. Coleman, and C. Harrison Parker.

On motion of Mr. C. Harrison Parker, Col. James D. Hill was unanimously elected president.

It was suggested by the chair that a treasurer *pro tem.* be chosen, and Mr. Branch M. King was unanimously elected.

Mr. Parker volunteered to act as secretary until the board should deem it proper to make another selection; which was accepted.

Moved by Mr. Parker that the subscriptions to the capital stock already secured be called in at once and deposited with the treasure-. Adopted unanimously.

Moved by Mr. Vance that the secretary be authorized to close the purchase for the double cylinder printing press offered by Palmer & Co. for $3,750 to Col. W. G. Vincent, and that the treasurer endeavor to provide for funds to meet payment on same as soon as possible. Adopted unanimously.

Moved by Mr. Vance that the secretary be authorized to purchase at once the necessary outfit for the composition-room of the paper. Adopted unanimously.

The meeting then adjourned till Friday, at 3 p. m., at the office of James D. Coleman, 9 Commercial place.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd.*

113 *Minutes of the Board, April 25th*, 1890.

Offered in Evidence by Counsel for Defendant.

The board met, pursuant to adjournment, April 25th, President Hill in the chair.

Present: Hill, Vance, Parker, and Coleman.

The minutes of the previous meeting were read and adopted.

Moved by Mr. Vance that the treasurer *pro tem.* be instructed to turn over to Col. W. G. Vincent the amount necessary to pay the purchase price of the double-cylinder printing press offered by Palmer & Co. for $3,750, and for which Col. Vincent has agreed to become responsible. Adopted unanimously.

Memorandum.

Mr. Branch M. King, having declined to act as treasurer *pro tem.* for collection of the funds, had urged upon Mr. I. H. Stauffer, Jr., to act in that capacity, and he had proceeded to do so.

Moved by Mr. Vance that the treasurer *pro tem.* be authorized to pay for the outfit for the composition-room authorized to be purchased by the secretary. Adopted unanimously.

On motion of Mr. Coleman, it was resolved that the secretary look further into the matter of securing a building suitable for the company and report as to rental, &c. Adopted.

Moved by Mr. Coleman that a committee be appointed to draw up by-laws. Adopted.

Messrs. Coleman and Vance were appointed on this committee.

On motion of Mr. Vance, the matter of purchasing motive power for the press was referred to the president and secretary, with authority to act.

On motion of Mr. Vance, the secretary was requested to look into the matter of temporary arrangements for printing the paper, and take steps towards organizing the force of employees to get out the same.

114 The meeting adjourned till Monday at 3 p. m.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, April 28th, 1890.

Offered in Evidence by Counsel for Defendant.

The board met pursuant to adjournment, President Hill in the chair.

Present: Messrs. Hill, Vance, and Parker.

Col. Hill reported that the gas engine had been secured for the sum of $450.

Col. Hill also reported that Mr. John Dymond was willing to accept the business management of the paper, and he was requested to confer further with that gentleman in relation to the matter.

The meeting adjourned till tomorrow.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, April 29th, 1890.

Offered in Evidence by Counsel for Defendant.

The board met pursuant to adjournment, President Hill in the chair.

Present: Messrs. Hill, Vance, and Coleman.

It was moved by Mr. Vance that the president be authorized to employ one or more solicitors to solicit business for the paper and to arrange to pay for same as he may deem proper at current rates. Adopted.

It was moved that the president be authorized to enter into negotiations for a business manager for the paper. Adopted.

Moved to adjourn to Wednesday, April 30th, at 4 p. m., at

115 10 Carondelet street. Carried.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, May 3rd, 1890.

Offered in Evidence by Counsel for Defendant.

The board met, pursuant to call, May 3rd, 1890, Mr. Hill in the chair and a quorum present.

Moved by Mr. Coleman that the president be authorized to enter into a contract with C. Harrison Parker, as manager, on the following terms and conditions: ——.

Moved that Mr. Tracy be employed as business manager at a salary of fifteen dollars per week.

Adjourned to 9 a. m. on Monday.

(Signed) C. HARRISON PARKER, *Sec'y.*

Minutes of the Board, May 6th, 1890.

Offered in Evidence by Counsel for Defendant.

The board met pursuant to adjournment, President Hill in the chair.

Present: Messrs. Hill, Vance, Parker, and Coleman.

President Hill stated that the contract with C. Harrison Parker had been read to him and had been executed, and that he had also had an interview with Mr. John Dymond.

President Hill read the resolution authorizing the contract with C. Harrison Parker.

(Signed) C. HARRISON PARKER, *Sec'y.*

Moved by Mr. Vance that the resolution be adopted. Carried.

Moved by Mr. Coleman that a counter-letter be drawn up
116 according to the understanding in the case of Mr. John Dymond. Adopted.

The question of selecting a name for the new journal was then taken up, and, on motion of Col. Hill, "The New Delta" was adopted.

Adjourned to 3 p. m. May 6th.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, June 6th.

Offered in Evidence by Counsel for Defendant.

The board met, pursuant to adjournment, at 3 p. m., President Hill in the chair and a quorum present.

The resignation of Mr. George K. Bradford was accepted and Mr. John Dymond elected as a member of the board to fill the vacancy.

On motion, Mr. Dymond was elected treasurer.

Adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, June 19th, 1890.

Offered in Evidence by Counsel for Defendant.

The board met in accordance with call, President Hill in the chair.

Present: Messrs. Hill, Dymond, Coleman, and Parker.

It was moved by Mr. Dymond that the president and secretary be

authorized to issue stock as fast as paid up & for all amounts already subscribed. Adopted.

It was moved by Mr. Coleman that additional stock to the extent of five thousand dollars over and above the amount already subscribed shall be open to subscription to meet the financial needs of the corporation. Adopted unanimously.

117 Moved by Mr. Coleman that, in accordance with article 9 of the charter, a meeting of the stockholders be called to amend article 6 of the charter and provide for an increase in the number of the board of directors.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

MEMORANDUM.—The call for the meeting of the stockholders was published in The New Delta, commencing June 30th, 1890, to August 2nd, 1890, postponed to August 16th, 1890, and published from Nov. 13th, '90, until December 15th, 1890.

Minutes of the Board, Nov. 22nd, 1890.

Offered in Evidence by Counsel for Defendant.

The board met according to call, President Hill in the chair and a quorum present.

The following was offered by Mr. John Dymond and duly seconded:

"Resolved, That C. Harrison Parker, of this board, be authorized to proceed to Memphis, Tenn., and enter into contracts for telegraphic and news service for a morning issue of The New Delta. Said contracts are to be in acceptance of the option of the Southern Press News Association under date of August 14th, 1890, which was extended for thirty days on November 10th, 1890, and will bind the Louisiana Printing and Publishing Company, Limited, and their successors as if made by this board of directors."

The resolution was adopted.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

118 Minutes of the stockholders' meeting held in pursuance to call, published in The New Delta, according to resolution of the board of directors, at the office of The New Delta, No. 43 Natchez street, on the 15th day of December, 1890, at 3 o'clock p. m.

The meeting was called to order by President James D. Hill, who stated the purposes of the meeting, C. Harrison Parker acting as secretary.

The secretary announced that a majority of the stockholders were present in person or represented by proxy, according to the credentials that had been presented.

On motion of Mr. Hart, the calling of the list of stockholders was dispensed with.

Mr. Dymond offered the following resolution:

Resolved, That article 6 of the charter of the Louisiana Printing and Publishing Co., Limited, be amended to read as follows:

Article sixth.

All the corporate powers of said company shall be vested in and exercised by a board of directors, composed of twenty stockholders of said corporation, to be elected annually on the third Monday in April; the first election to be held in 1893. All such elections shall be by ballot, and shall be held at the office of the company, under the superintendence of three commissioners to be appointed by the board of directors. Ten days' prior notice of such election shall be given by publication in one of the daily newspapers of New Orleans, and the directors then elected shall serve and continue in office until their successors shall have been elected.

Each stockholder shall be entitled to cast, either in person or by proxy, one vote for every share of stock held by him, and the majority of votes cast at such election shall elect the directors
119 for the ensuing year.

If at any time there should be a failure to elect directors as above provided, such failure shall not dissolve the corporation, but the then existing board of directors shall continue to hold office, and as soon as may be thereafter another election shall be held, whereof ten days' prior notice shall be given by publication in one of the daily newspapers of New Orleans. Any vacancy occurring in the board of directors from any cause whatever shall be filled by the remaining directors. Three directors shall constitute a quorum for the transaction of business.

Resolved, That article seventh shall be amended to read as follows:

Article seventh.

The following-named persons shall constitute the first board of directors, to wit:

James D. Hill,
John Dymond,
William W. Vance,
James D. Coleman,
C. Harrison Parker,
Henry McCall,
E. J. Hart, Jr.,
T. A. Clayton,
A. A. Woods,
R. B. Scudder,
Charles Parlange,
Geo. K. Bradford,
Louis Bush,
W. G. Vincent,
Branch M. King,

I. H. Stauffer, Jr.,
120 J. M. Foster,
Edward Gauche,
F. H. Harris,
Jno. C. Wickliffe,

and they shall hold office until the third Monday in April, 1893, and until their successors are duly elected.

The board of directors at its first meeting shall elect from its number a president and a vice-president and appoint a secretary and treasurer, who need not be a member of the board, and also, if it deems proper, it shall have power to appoint a general manager, who may or may not be a member of the board. The salaries of all employés shall be fixed by the board of directors; and should the board so determine, it shall have power to give the general manager full and absolute control, without any interference whatever, of the conduct of the newspaper and its business; to vest in such manager the entire direction of the operation and policy of the newspaper, the selection of its employés, and the general conduct of its business.

The board of directors shall have the authority to appoint and contract with the general manager for a period not exceeding three years, and to fix his compensation, in money or stock, as they may deem best.

The vote stood as follows:

J. Bendinger	5	shares, aye.
Frank McGloin, as proxy	14	" "
I. H. Stauffer, Jr	20	" "
E. J. Hart	40	" "
C. E. Tally	2	" "
Euclid Borland	8	" "
J. H. O'Connor	8	" "
J. C. Wickliffe, as proxy	16	" "
121 John Dymond	208	shares, aye.
John Dymond, as proxy	97	" "
James D. Hill	10	" "
James D. Hill, as proxy	686	" "
C. Harrison Parker	160	" "
C. Harrison Parker, as pro	96	" "
Noah W. Longshore	8	" "
Noah W. Longshore, as proxy	13	" "

1,389 votes, represented in person or by proxy, according to credentials on file with the secretary, voted unanimously for the amendment, the same being a majority of all the stockholders of the corporation, and the amendment was declared adopted.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, December 23rd, 1890.

Offered in Evidence by Counsel for Defendant.

The board met this day, Pres-ent Hill in the chair.

Present: Messrs. Dymond, Coleman, Parlange, Wickliffe, Clayton, Harris, and Parker.

Mr. Coleman moved that there be an executive committee of the board, to consist of the former executive committee (president, treasurer, and secretary) and two additional members, to be appointed by the chair. Carried.

The chair appointed on this committee as the two additional members Col. W. G. Vincent and E. J. Hart, Jr.

Moved by Mr. Parlange that a finance committee, to consist of seven members, be appointed by the chair. Carried.

The chair appointed the following-named gentlemen as members of this committee: Col. W. G. Vincent, Col. A. A. Woods, E. J. Hart, Jr., Branch M. King, J. D. Coleman, I. H. Stauffer, Jr., 122 and R. B. Scudder.

A letter from Mr. Gauche was read, declining to serve as a director in accordance with the election at the last stockholders' meeting.

It was moved by Mr. Wickliffe that the president and secretary see Mr. Gauche and induce him to serve on the board. Carried.

On motion of Col. Hill, the first Monday in each month, at 3.30 p. m., was selected as the day for the regular meetings.

Moved by Mr. Dymond that the subscription list to shares of stock secured by Mr. E. J. Hart be called for payment in accordance with the agreement therein contained. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, February 5th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President J. D. Hill in the chair and a quorum present.

The resignation of Mr. Gauche was accepted, and Mr. —— was elected in his place.

Mr. I. H. Stauffer, Jr., requested to retire from the executive committee, and Mr. Bloomfield was appointed by the chair in his place.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, March 7th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met pursuant to call, President Hill in the chair
123 and a quorum present.

It was moved that the thanks of the board be extended to Mr. D. W. Helm, of Melville, for his earnest efforts in behalf of The New Delta. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, March 24th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met pursuant to call, President J. D. Hill in the chair.

Present: Vance, King, Clayton, Parlange, Hart, Jr., Scudder, and Wickliffe.

The reading of the minutes of the previous meeting was dispensed with.

On motion, Col. Vincent was appointed a committee to call on parties for the purpose of securing additional stock subscriptions to the paper. Adopted.

It was moved by Mr. Scudder that the stockholders be notified by circular letter that money was urgently needed to complete the capital stock of the paper to carry on the same. Carried.

Moved by Col. Vincent that a balance-sheet of the books be prepared and held at the office subject to inspection of board of directors. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Meeting of the Board, March 31st, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President J. D. Hill in the chair
124 and a quorum present.

Moved by Mr. Scudder that the secretary be instructed not to send out the circular letters calling upon stockholders in the terms as suggested at a previous meeting. Carried.

It was then moved that a circular letter of a different form be sent out. Carried.

The meeting adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, August 15th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President J. D. Hill in the chair.

Present: Messrs. Bloomfield, Woods, King, Parker, and Wickliffe.

Mr. King, who had been appointed at an informal meeting previously on the committee on purchasing a new perfecting press, made a report advising the acceptance of the offer made to this committee by the Goss Printing Press Company of Chicago to furnish a press, stereotype, and outfit for this company.

The report was received.

On motion of Mr. W. B. Bloomfield, seconded by Mr. Branch M. King, it was resolved that James D. Hill, president, be authorized to enter into a contract with the Goss Printing Press Company of Chicago to purchase for the Louisiana Printing and Publishing Company, Limited, a perfecting press for the sum of seven thousand four hundred dollars, under the terms and conditions to be agreed upon by the contracting parties. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

125 *Meeting of the Board, September 2nd*, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President J. D. Hill in the chair.

Present: Messrs. Woods, Scudder, Bloomfield, Vance, Parlange, and King, Mr. Branch M. King acting as secretary.

Mr. King offered the following:

"Be it resolved, That the capital stock of this company be issued to the Democratic anti-lottery State executive committee for all moneys paid into this company by them, said stock to be issued in the name of the chairman of said committee, Mr. Charles Parlange, to be held in trust by him, to be disposed of as said committee may see proper."

Duly seconded and adopted.

After discussing the propriety of entering into a contract with Messrs. Parker and Greely, editor and manager of the paper, the meeting, on motion, adjourned subject to call.

(Signed) C. HARRISON PARKER, *Sec't.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, October 22nd, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, Col. A. A. Woods in the chair.

Present: Messrs. Wickliffe, Vance, Scudder, Bloomfield, King, Parlange, Woods, Hart, and Hill.

Moved by Mr. King that a committee be appointed, consisting of Messrs. Hill, King, and Woods, to secure additional subscriptions to the capital stock of the company, its financial needs requiring an additional amount of capital. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't,*
Per A. A. WOODS.

126 *Minutes of the Board, November 6th,* 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President J. D. Hill in the chair.

Present: Messrs. King, Woods, Bloomfield, Wickliffe, and Parker.

Moved by Mr. Wickliffe that Mr. C. Harrison Parker be authorized and instructed to proceed to Memphis on Tuesday next to represent this company in relation to our news service in compliance with the call received from the president of the Southern Press News Association, and to make any contracts while there that may be necessary to the interests of the company. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

Meeting of the Board, November 13th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, Col. J. D. Hill in the chair.

Present: Messrs. Scudder, Woods, Vincent, Stauffer, and Parker.

The resignation of Mr. R. B. Scudder as a member of the board was offered and accepted, and Mr. S. O. Thomas was elected to fill the vacancy on the board.

On motion, a committee, consisting of Messrs. King, Hill, and Woods, was appointed to make up a statement of the financial affairs of the company at an adjournment meeting Saturday, at 4 p. m.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Meeting of the Board, November 16th, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, President Hill in the chair.

Present: Messrs. Vincent, Woods, Bloomfield, Wickliffe, and Parker.

127 The following resolution was offered by Col. A. A. Woods and adopted unanimously:

"Whereas the subscriptions to the capital stock of this paper have not been adequate to successfully conduct the paper; and

"Whereas there are large obligations maturing in a few days and an utter inadequacy of funds to meet the same; and

"Whereas new subscriptions to the capital stock of the corporation *is* absolutely essential to successfully continue the newspaper; and

"Whereas it has been impossible to find such new subscriptions with the present outstanding capital stock; and

"Whereas it has been intimated that new capital may be obtained, provided two-thirds (⅔) of the present stock be transferred to the subscribers of the said new stock:

"Therefore be it resolved, That this board, in the interest of the continuance of the newspaper and its future successful administration, requests the stockholders to transfer their stock for the purpose of enabling this board to consum-ate an arrangement to put into the paper twenty-five thousand dollars ($25,000) of new capital, or so much thereof as may be necessary for the purpose of endeavoring to conduct the paper to a successful issue on a permanent basis."

The following resolution was offered by Col. A. A. Woods, duly seconded, and adopted:

"Whereas this corporation is in immediate need of the sum of five thousand dollars ($5,000) to bridge over its pressing necessities and to pay note falling due on the new press:

"Be it resolved, That the president of this corporation be, and he is hereby, authorized to issue a demand note for five thou-
128 sand dollars ($5,000), with eight per cent. interest from date until paid, and to secure said note by the pledge of the old press and gas engine, new press, engine and boiler, stands, fixtures, type, furniture, etc.; that for the purpose of making this pledge the president be authorized to draw an act of pledge, and that the lender of the money be authorized to designate an agent who shall be the custodian of the aforesaid property for his benefit and account."

It was moved and seconded that the president be authorized to carry out a contract with the Goss Printing Press Company of Chicago by giving notes of the company payable as per the contract. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Meeting of the Board, Wednesday, December 2nd, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day at the office of the company, No. 43 Natchez street, at 4 o'clock p. m., President Hill in the chair and the following-named members of the board present:

Messrs. Woods, Bloomfield, Parker, King, Vance, Vincent, and Wickliffe.

No business having been brought before the board, the meeting adjourned to Thursday, December 3rd, 1891, at 4 o'clock p. m.

(Signed) C. HARRISON PARKER, *Sec't.*

(Signed) JAS. D. HILL, *Pres'd't.*

Minutes of the Board, Thursday, December 3rd, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day at the office of the company, No. 43 Natchez street, President Hill in the chair and the following-
129 named members of the board present: Messrs. Parker, Woods, Vincent, Bloomfield, and Wickliffe.

Mr. Woods offered the following resolution:

"Whereas negotiations have been entered into to take sixteen thousand dollars of new stock and to endeavor to procure nine thousand dollars more, so as to make the subscription to the new stock equal twenty-five thousand dollars; and

Whereas the position of the paper is such as to make this arrangement *premenently* advisable for the following reasons:

1st. Because the matured paper of the company has gone to protest for want of means to pay the same;

2nd. Because outstanding obligations to the extent of twelve thousand dollars or thereabouts are about to be precipitated on the company;

3rd. Because the income of the company does not equal the outcome and the present capital is utterly inadequate to enable the paper to continue its publication;

4th. Because, unless some immediate steps are taken, thirty-five hundred dollars of obligations maturing on tomorrow will irretrievably wreck the paper and cause it to suspend its publication;

5th. Because stockholders have been repeatedly called upon by notice and otherwise to take increase of stock, so as to put the company in funds;

6th. Because, after repeated solicitations and endeavor to get in fresh money by way of contribution or otherwise, the company finds itself, owing to the failure of such efforts, in the position above indicated; and

Whereas, under a resolution of this board previously passed, stockholders have been requested to transfer their stock in order
130 to induce the taking of these new subscriptions; and

Whereas by a previous understanding with Mr. C. Harrison Parker and Mr. Nathan Greely it was agreed that in addition to the cash salary paid them, in the event of the success of the paper and its reaching such a position as to secure its permanency and stability, that Mr. Parker was to receive, in addition to any cash compensation paid him, an issue of stock at the rate of eight thousand dollars per annum, of which twelve thousand dollars has been already earned and the balance will accrue at the rate of eight thousand dollars per annum for the next three years; and

Whereas the understanding with Mr. Greely was that he was to receive, in addition to his cash compensation, five thousand dollars per annum in stock upon the same terms as the agreement with Mr. Parker, of which about three thousand dollars has been earned and the balance will become due: Therefore

Be it resolved, That, reserving a sum of stock equal in amount to twenty-five thousand dollars to cover the new subscriptions which it is expected will be obtained, as aforesaid, the entire balance of the capital stock not already issued, exclusive of the twenty-five thousand dollars to be issued, as aforesaid, for the new subscription, be, and the same is hereby, directed to be issued to C. Harrison Parker and Nathan Greely jointly; this issue, in connection with the twenty-five thousand dollars reserved, as aforesaid, and in connection with the stock already issued, making an issue of stock up to the full amount of the capital stock of this corporation—that is to say, one hundred and fifty thousand dollars, provided that the issue of the stock aforesaid and the acceptance by Mr. Parker and Mr. Greely be considered as a complete discharge from any further obligation of this corporation to issue stock, and that any sum
131 of stock to which they would be entitled in excess under the agreements aforesaid of the foregoing amount be considered as remitted by them, they accepting the remainder of the stock, as above stated, in full discharge of the obligations aforesaid, and they obligating themselves to carry out for the next three years the contract to give their entire time and services to the paper for such cash compensation as may be fixed by the board of directors."

Mr. Woods moved the adoption of the resolution; which motion was duly seconded, and the resolution was adopted, Mr. Parker being excused from voting.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres't.*

Minutes of the Board, Wednesday, December 11, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, pursuant to call, at #43 Natchez street, President Hill in the chair and the following-named members of the board present: Messrs. Thomas, King, Bloomfield, Wickliffe, Parker, secretary.

Mr. Parker offered the following resolution:

Whereas the contract between the Southern Press News Association and the Louisiana Printing & Publishing Co., Ltd., was *entitled* into December 8th, 1890, for a news service for one year, with the option of extending the same given to the Louisiana Printing & Publishing Co., Ltd.; and

Whereas C. Harrison Parker, in behalf of this company, has notified the president of the Southern Press News Association that the Louisiana Printing & Publishing Company takes notice of its rights

of extension of said news service for the period of one year from December 8th, 1891:

132 Be it resolved, That we reaffirm the authority of C. Harrison Parker, as given in a previous resolution of this board of date —— —, and ratify his action in giving said notice of extension to the Southern Press News Association.

Which resolution, having been seconded and put to the board, was unanimously adopted.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

Meeting of the Board, Wednesday, December 23rd, 1891.

Offered in Evidence by Counsel for Defendant.

The board met this day, pursuant to call, at No. 43 Natchez street, President Hill in the chair and the following members of the board present: Messrs. Vincent, Parker, Woods, Wickliffe.

On motion, the reading of the minutes of the previous meeting was dispensed with.

A communication was received from John Clegg, offering nine shares of stock to the board.

Moved by Mr. Parker that the board decline to purchase same and authorize the owner to sell them. Carried.

Moved by Col. Vincent that a committee of three be appointed to examine the books of the company and report to the board. The same was adopted, and Messrs. Woods, King, and Scudder were appointed on the committee.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

Minutes of Thursday, December 31st, 1891.

Offered in Evidence by Counsel for Defendant.

The board of directors met this day, at # 43 Natchez St.,

133 pursuant to call, President J. D. Hill in the chair & the following members of the board present: Messrs. Wickliffe, Vincent, Parker, and Harris; Parker, secretary.

Minutes of the previous meeting were read and adopted.

The committee appointed at the previous meeting to examine the books of the company being absent, there was no report.

The resignation of Mr. W. W. Vance as a director was offered and accepted, and on motion of Col. Vincent, duly seconded, Mr. N. Greely was elected to fill the vacancy caused by Mr. Vance'- resignation. Carried.

Moved by Col. Vincent that Mr. N. Greely be elected temporary treasurer of the company, without salary. Carried.

Moved by Col. Vincent, & seconded, that the committee on books be requested to report to the board as to the propriety of exacting a bond from the treasurer. Carried.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

Minutes of the Board, Thursday, February 4th, 1892.

Offered in Evidence by Counsel for Defendant.

The board met this day, pursuant to call, at #43 Natchez street, President Hill in the chair.

Present: The following-named members of the board: Mess. Wickliffe, Bloomfield, Woods, Harris, Parker, and Greely.

A report was made by Mr. Greely concerning the receipts and earnings of the company.

A communication was received from Mess. Patterson, Ray & Kiernan, of the Daily Truth, offering to purchase the old press belonging to this company.

Col. Woods moved that they be notified that the Louisiana
134 Printing & Publishing Co. could accept nothing but a cash offer for the press, an option being already out on the press. Adopted.

It was moved by Col. Wickliffe that a committee on by-laws be appointed. Carried.

The chair appointed on this committee Messrs. Woods, Vincent, and Hill.

The meeting then adjourned.

(Signed) C. HARRISON PARKER, *Sec'y.*

(Signed) JAS. D. HILL, *Pres'd't.*

Minutes of the Board, Monday, June 20th, 1892.

Offered in Evidence by Counsel for Defendant.

The board met this day, pursuant to call, at #43 Natchez street, at one o'clock p. m., President Hill in the chair and the following members of the board present: Messrs. Thomas, Woods, King, Vincent, Parker, Greely, and Parker, secretary.

Judge E. D. White made a statement to the board of the financial affairs of the corporation.

Mr. King offered the following resolution:

Whereas, by resolution of this board heretofore passed, the stockholders were requested to transfer two-thirds of their stock in order to secure the obtention of $16,000.00 additional capital; and

Whereas up to this time the amount of said transfers of stock have not been obtained; and

Whereas, pending the obtaining of said transfers, the said sixteen thousand dollars was loaned to the corporation and passed to a

"temporary loan account," to which fund the said money is held as a debt of the company, with a privilege on the part of the lenders of taking stock therefor and becoming, in addition thereto, the owners of the two-thirds of the stock to be transferred, as afore-
135 said; and

Whereas since that date ten thousand five hundred dollars ($10,500.00), in addition to the sixteen thousand dollars, as aforesaid, have been advanced the corporation to enable it to carry on its business:

Now, therefore, be it resolved, That owing to the inability of this corporation to transfer two-thirds of said stock, as aforesaid, up to this time, the said debt aforesaid of twenty-six thousand five hundred dollars ($26,500.00) remains at said "temporary loan account" as a demand debt due by this corporation, the said creditors to have the option of converting said loan into stock, as originally provided, and to have transferred to them the two-thirds of the former outstanding stock, provided they elect to take the same, and thus to merge their debt into stock; this option on their part to take stock to the amount of said twenty-six thousand five hundred dollars ($26,500.00), and to become, as aforesaid, in addition, owners of the two-thirds of transferred stock, to continue in favor of said creditors up to the 1st of February, 1894, their debt, pending the exercise of the option on their part, to be a demand loan due by the corporation, bearing eight per cent. per annum interest from date of advance.

Mr. King moved the adoption of the resolution; which motion was duly seconded, and the resolution was adopted.

Mr. Woods offered the following resolution:

Whereas it is necessary for the proper conduct of this corporation that there should be an executive committee appointed to supervise and conduct its business and direct all its financial affairs.

Note of Clerk.

Balance of minutes of Monday, June 20th, 1892, offered in evidence by counsel for plaintiff. See page 10 of this transcript.

136 *Minutes of the Board, April 18th, 1893.*

Offered in Evidence by Counsel for Defendant.

The board met pursuant to call, Col. Hill in the chair.

Present: Mess. Dymond, Thomas, Hart, Brousseau, & Parker, sec'y.

On motion of Mr. Thomas, the following parties were chosen to act as commissioners of election for directors, called for April 19th, 1893, in pursuance of the charter, by proper notice in the column of the Daily Delta, viz., Lee Putnam, L. H. Tanny, F. H. Harris.

Adjourned.

(Signed) JAS. D. HILL, *Pres'd't.*

(Signed) C. HARRISON PARKER, *Sec't.*

Memorandum.

The election of April 19th was held under the supervision of the commissioners duly appointed, and the list of directors chosen, as certified by them, promulgated in the column of the Daily Delta as follows.

(Signed) C. HARRISON PARKER, *Sec'y.*

Affidavit of Benjamin Rice Forman, Esq., Attorney-at-law, as to the Value of Mr. Garland's Services in the United States Court.

Offered in Evidence by Counsel for Defendant.

Filed March 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Affidavit of B. R. Forman.

I, B. R. Forman, being duly sworn, says: I am att'y-at-law, and that I am familiar with the value and extent of services rendered by H. L. Garland, Jr., in dissolving the seizure made under the attachment issued in the U. S. circuit court by the Remington Paper Co. *vs.* La. Printing & Publishing Co., and in dissolving the injunction issued by same plaintiff against the receiver of said La. Printing & Publishing Co., and that I believe his services therein as attorney were fully worth the sum of four hundred dollars.

(Signed) B. R. FORMAN.

Sworn to & subscribed before me March 13, '96.

(Signed) JOE GARIDEL, *D'y Clerk.*

137 *Bond of John W. Watson, Receiver.*

Offered in Evidence by Counsel for Plaintiff.

Filed June 9th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Receiver's Bond.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

Know all men by these presents that we, John W. Watson, as principal, and James D. Hill, A. A. Woods, Nicholas Burke, and

T. Fitzwilliam, as sureties, of the State of Louisiana, are held and firmly bound unto the judges of the civil district court for the parish of Orleans, in the full sum of ten thousand dollars on the part of John W. Watson, and in the sum of twenty-five hundred dollars for each of such sureties, *dollars*, current money of the United States of America, which we promise to pay to them or their successors in office; for the faithful performance of which we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, renouncing all benefit or division or discussion whatever.

Sealed with our seals this 8th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and the 117th of the Independence of the United States of America.

The condition of the above obligation is such that if the above-bounden John W. Watson, receiver of the Louisiana Printing and Publishing Co., Limited, does well and truly, according to law, administer and liquidate the affairs of the same, and further
138 does make and render a true, just, and perfect account of his actions and doings, when thereunto lawfully required, agreeable to law, then this obligation to be void, or else to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this day and year first above written.

(Signed) JOHN W. WATSON.
JAMES D. HILL,
For Twenty-five Hundred Dollars.
" A. A. WOODS,
For Twenty-five Hundred (2,500) *Dollars.*
" NICHOLAS BURKE,
For Twenty-five Hundred Dollars.
" T. FITZWILLIAM,
For Twenty-five Hundred Dollars.

In the presence of—
H. L. GARLAND, JR.

James D. Hill, A. A. Woods, Nicholas Burke, and T. Fitzwilliam, being duly sworn, say that, all their debts and liabilities being paid, they are well worth the sum of twenty-five hundred dollars, and that they reside in the parish of Orleans.

Sworn to and subscribed before me this 8th day of June, A. D. 1893.

[SEAL.] (Signed) HENRY L. GARLAND, JR.,
Notary Public.

Documents Showing Signatures of Stockholders Consenting to the Appointment of John W. Watson as Receiver.

Offered in Evidence by Counsel for Defendant.

Filed June 26th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

We, the undersigned, stockholders in the Louisiana Printing and Publishing Company, Limited, each holding and owning the number of shares placed opposite our names, consent and agree to the appointment of John W. Watson as receiver to said corporation, and ratify any action that may have been taken by his appointment to place all creditors on a footing of equality.

139

Jno. W. Watson	Four shares.
E. B. Kruttschnitt	20
J. C. Gilmore	10
Sam'l L. Gilmore	Four shares.
Maurice Stern	Twenty shares.
Geo. Seeman	20
R. J. Whann	Three shares.
R. H. Lea	Eight shares.
Ed. Eisenhauer	Eight shares.
F. Bryant	40
Wm. Preston Johnston	Eight shares.

(Written with red ink:) N. O., July 13, '96. (Signed) T. C. W. Ellis, judge.

Petition of Receiver Alleging Consent of Stockholders to His Appointment.

Filed June 26th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

The petition of John W. Watson, herein appointed receiver to the Louisiana Printing and Publishing Co., Ltd., and herein appearing in such capacity and as the special mandatory of the following-named stockholders in said corporation, each of whom holds and owns the number of shares mentioned opposite his name, to wit:

140

John W. Watson		4 shares.
E. B. Kruttschnitt		40
H. T. Gurley		1
A. A. Woods		29
Hewes T. Gurley		One share.
A. A. Woods		..
Stanley O. Thomas		150, 320, & 80.
T. Fitzwilliam & Co		2
Jas. D. Hill		Four hundred & fifty shs.
J. H. Aitkin		1
A. L. Buhler		One share.
John Gauche's Sons		Four shares.
Jules A. Gauche		1
N. Wells Longshore		8 shares.
J. G. Grant		4 shares.
Henry Dickson Bruns, M. D		5 shares.
Fred. Zengel		One share.
P. M. Schneideau		Two shares.
Westerfield & Taylor Fornaris		Two shares.
Herman Meader		Sixteen shares.
Terry & Juden		Four shares.
Henry Stewart		Eight shares.
Theo. C. Berg		Two shares.
Jno. Dymond		40
C. Harrison Parker		425 37 & 200.
Westfeldt Brothers		Ten shares.
G. R. Westfeldt		Four shares.
W. C. Flower		Five shares.
B. M. King		..
	Henry Newman	Eight shares.
141	Ph. Werlein	17
	Frankenbush & Borland	Eight shares.
Euclid Borland		Ten shares.
B. P. Mors		4
Edgar H. Farrar		Twelve shares.
Stanley O. Thomas		550 shares.
T. Fitzwilliam & Co		2
Jas. D. Hill		450
J. H. Aitkin		1
A. L. Buhler		1
John Gauche's Sons		4
Jules A. Gauche		1
N. Wells Longshore		8
J. G. Grant		4
Henry Dickson Bruns		5
Fred. Zengel		1
P. M. Schneidau		2
Westfield & Taylor		2
Herman Meader		16
Terry & Juden		4
Henry Stewart		8

	Theo. C. Berg	2.48
	Jno. Dymond	40
	C. Harrison Parker	625.37
	Westfeldt Bros.	10
	G. R. Westfeldt	4
	W. C. Flower	5
	B. M. King	16
	Henry Newman	8
	Ph. Werlein	17
142	Frankenbush & Borland	8
	Euclid Borland	10
	B. P. Mors	4
	Edgar H. Farrar	12
	J. C. Gilmore	10
	Sam'l L. Gilmore	4
	Maurice Stern	20
	Geo. Seeman	20 shares.
	R. J. Whann	3
	R. H. Lea	8
	Ed. Eisenhauer	8
	F. Bryant	40
	Augustus Craft	5
	Ledoux Co., Ltd	10
	H. Lochte	3.50
	E. F. Kohnke	1
	E. Feibleman & Co.	3
	J. S. Tolmage	1
	Jno. Mumford	4
	Albert Mackie	8
	N. D. Wallace	6
	E. J. Hart	80
	Chas. K. Hall	2
	P. O. Rosenstream	2
	J. T. Aycock	10
	Louis Mathis	4
	A. R. Brousseau	1,181.20
	Wm. B. Bloomfield	40
	E. P. Mackie	3
	Jas. Jackson	20
	Hugh Flynn	8
143	Aaron Davis	4 shares.
	H. Maspero	8
	R. M. Ong	20
	T. P. Marton	4
	A. Adler	28
	Stephen J. Derbes	4
	John Barkley	4
	W. G. Vincent	56
	W. O. Lea	10
	Albert Montgomery	12
	H. McCloskey	20

John C. Maurray	9	
L. Arnault	8	
J. E. Cotton	2.34	
J. Dendinger	13	
Frank Gordan	29	
L. Pfeifer	5	
Amos Kent	4	
W. C. Kent	2	
W. L. Grace	1	
A. A. Browne	2	
Andrew Currill	4	
J. W. Bryan	2	
W. Porcher Miles	170	
A. Doherty	4.60	
C. J. Foster	8	
Milton A. Strictland	4	
Fonmet & Piyo	2	
John O'Neal	4	
S. F. Meeker	2	
Jas. Jeffries	8	
144 T. F. Bell	5	shares.
N. Gregg & Son	8	
O. G. Browne	2	
Henry McCall	40	
Levi Cooper	2	
C. Kline	2	
E. N. Pugh	12	
R. N. Sims	2	
Harry C. Brand	3	
C. C. Williams	1	
John S. Lombard	2	
O. Naquin	2	
Aug. Levert	8	
J. M. Hollingsworth	8	
Leo. Conillme	2	
Geo. P. Bowman	1	
Gordon Davis	1	
Dr. A. J. Meyer	3	
Dr. Louis E. Meyer	1	
J. M. Williams	2	
N. C. Blanchard	4	
Thos. Supple	2	
Buckalen & Pleasants	2	
Samuel I. Raymond	1	
J. C. Moncure	2	
Wm. Empoon	2	
B. C. Le Blanc	8	
J. C. Monday	1	
R. D. Swift	1	
Thos. L. Keefe	12	
Thos. Kleinpeter	1	

145	J. M. Bursineres	20 shares.
	Geo. K. Bradford	8
	Jos. Eibelin	2
	R. H. Jones	2
	Chas. L. Gonaux	1
	D. W. Helm	34
	Richard Hetherton	2
	W. S. Rowe	4
	G. R. Tolson	1
	T. J. Worden	4
	J. E. Church	5
	P. Payton	4
	R. R. McBride and T. Clement	1
	J. M. Bowles	2
	O. P. Amacker	4
	J. M. Foster	9
	L. Sterling	2
	Dr. Fred. J. Mayer	4
	E. G. Robichaux	4
	J. N. Pharr	37
	O. Gayden	2
	Jas. Jeffries	8
	D. W. Pipes	9
	J. H. Prescott	2
	F. M. Brooks	2
	C. M. Richard	2
	J. Y. Sanders	2
	Chas. J. Reddy	1⅜
	J. A. Dalferes	1
	Total shareholders	151
	Total stock	4,275 shares.

146 That said number of stockholders and the said amount of stock so held by them are a large majority of the stockholders and stock in the Louisiana Printing and Publishing Company, Ltd.; that said stockholders consent to and ratify and confirm the appointment of petitioner as receiver herein.

That under the charter of the Louisiana Printing and Publishing Co., Ltd., a majority in amount of the stock could liquidate the affairs of the corporation, and said stockholders now consent to the liquidation thereof by your petitioner, and abdicate or surrender whatever rights they may have or might have under the charter in favor of the receiver appointed by this court, and ask that said charter be forfeited and the affairs of said corporation wound up by the officer of this court.

Wherefore petitioner prays that the Remington Paper Co. and Thomas B. Lyons, represented by B. R. Forman, be cited to answer this petition, and after due proceedings had your petitioner's ap-

pointment as receiver be confirmed and the charter of the Louisiana Printing & Publishing Co. be decreed forfeited.

Prays for all necessary orders & for general relief.

(Signed) By his att'y, H. L. GARLAND, JR.

Service accepted.

(Signed) B. R. FORMAN,
Att'y for T. B. Lyons.

Bill of Exception of the Remington Paper Company.

Offered in Evidence by Counsel for Defendant.

Filed October 12th, 1893.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

147 Be it remembered that on the trial of the rule taken in this case by Thomas B. Lyons and D. J. Norwood on the 19th day of September, 1893, against the Remington Paper Company and J. B. Donally for contempt, and to sell the property in premises Nos. 41 & 43 Natchez St., said Remington Paper Company and J. B. Donally, who is U. S. marshal, then and there, through their counsel, excepted to the jurisdiction of the court to try said rule for the reason that the property was held by said Remington Paper Company and J. B. Donally, as United States marshal, under and by virtue of writs of attachment and sequestration from the circuit court of United States for the eastern district of Louisiana, legally issued in suit No. 12197, entitled Remington Paper Company *vs.* Louisiana Printing and Publishing Company, Limited, under the Constitution and laws of the United States.

That said writs had never been set aside, although the said circuit court had rendered an order that the marshal restore the property attached and sequestered to John W. Watson, receiver, "unless within five days the Remington Paper Company applies for and ultimately receives authority from the civil district court which appointed Watson, or from the appellate court, to hold same under said writs," the said Remington Paper Company had made application to said civil district court, which had been denied, but said judgment had not become final, and a motion of appeal had been taken therefrom.

But the court was of the opinion that said objection- were invalid and denied the right claimed, as aforesaid.

By the COURT: Before the Remington Paper Co. attached the property of the La. Printing & Pub. Co. a decree had been
148 rendered by this court appointing John W. Watson receiver. He had taken charge & was in the actual possession of the property & had been for ten or twelve days when the Remington

Paper Co. attached under writs from the U. S. C. court. No appeal has been taken from the order appointing the receiver & all parties, stockholders & creditors, have acquiesced. The Remington Paper Co., which claims only as a creditor, is the only objector. It had no right to attach in the Federal court & dispossess the officer of the State court (the receiver) in possession. It had not the authority of this (State) court to attach, & the Federal court ordered restoration unless in 5 days it should obtain permission for the marshal to hold. A suit to annul the receivership & for damages against the receiver for defending in the U. S. court against the attachment was brought by the Remington Co., but this was not asking permission for the marshal to hold. As this court has jurisdiction of the receiver & the property, I ruled it also had jurisdiction in the matter excepted to here.

Whereupon counsel for Remington Paper Company there and then excepted to the jurisdiction of the court and asked leave and time to prepare this its bill of exceptions, which is now done and allowed.

N. O., La., Oct. 12, 1893.

(Signed) T. C. W. ELLIS, *Judge.*

Reasons for Judgment.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

Reasons for judgment.

149 Since the case was remanded to this court a trial has been had. On full consideration of facts and law, my judgment is against the intervenors.

I make my reasons for judgment on the exception of no cause of action, filed Sept. 9, '93, a part of the present reasons. I do not understand that the supreme court overruled my reasons for judgment, although they reversed my judgment. I say this advisedly, because if I could find, even by any implication, that the supreme court had laid down the rule different from my own views, I would follow it without hesitation or question. That I do not find here and I can do no better than to adopt what I wrote in Sept., 1893, as my reasons now, for in my opinion they are applicable, as the facts proved at the trial and the case as made up.

Intervenors ought not to hold Watson, receiver, for damages. He did not provoke the appointment which I conferred on him as receiver. His appearance in the U. S. court to defend the property against intervenors' attachment, in the interest of a fair division of the corporate assets among all the creditors or parties in interest, was, I think, a legal and proper act.

He had his appointment and he had taken the oath, and as soon as the inventory was finished he gave his bond.

If he could not appear to defend the general creditors and the property, who could? It was a case of peculiar exigency, and I hold that his appearance and successful defence in the U. S. court was proper and legal and rightful acts; *ergo*, he has not damaged intervenor-.

I am asked to annul the order appointing the receiver. I answer, *Cui bono?* Grant that it was irregular or not in form of law, and yet the facts remain that the order was granted; that intervenors did not appeal from it, and that as a fact the receiver has gone on with his liquidation or administration, and has its affairs
150 wound up and about ready for settlement. Intervenors are creditors. If they chose to rely on their attachment in the Federal court, and when checked there and referred back to the State court, chose not to appeal from the order, I could not stay the effect of that order simply because one creditor (intervenor here) had sued the receiver for damages and to annul it. Intervenors did not appeal, nor take an injunction, nor do anything more than file this suit. Reading all the allegations of their petition and considering all the proofs, as I have, my mind is fixed that their should be judgment against intervenors. I annex my reasons filed Sept. 9, '93, as a part of this opinion.

N. O., La., May 15, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Judgment.

Extracts from minutes, "division A," Friday, May 15th, 1896.

Present: Honorable T. C. W. Ellis, judge.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

For the reasons assigned in the written opinion of the court, this day delivered and filed—

It is ordered, adjudged, and decreed that there be judgment in favor of John W. Watson, receiver of the La. Printing and Publishing Company, and against the third opponent, the Remington Paper Company, dismissing its suit, and that it pay the costs of the proceedings in the intervention.

151 *Rule for New Trial.*

Filed May 15th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

Erroneously entitled by the clerk:

F. H. POPE
vs.
LOUISIANA PRINTING & PUBLISHING CO.

On motion of Merrick & Merrick, of counsel for the Remington Paper Co., and suggesting that the judgment of this honorable court in this case does the said plaintiff injustice, among other things, because it purports to be in a case other than the case brought by said Remington Paper Co., which is a direct action of nullity against said Watson & Pope *et al.*, and which is not and does not purport to be nor is it an intervention, and plaintiff is entitled to have the testimony, judgment, with the caption and headed as taken, testimony taken in said case and in accordance with petitioner's petition, as filed by plaintiff, and not as an intervention, and plaintiff cannot be prejudiced by an erroneous indorsement of the title of the suit by the clerk, and as plaintiff is not an intervenor, but an original plaintiff in a direct action of nullity, as recognized by the supreme court in this case on the former appeal, 46 Ann., 793, the said judgment of this court is erroneous, besides being contrary to the law and the evidence, and for the reason that the same ought to be rendered against petitioner or in petitioner's favor, so that it may clearly appear what is decreed in its favor or against it, and that the bills of exception which this court allows to be drawn at another day may have the proper caption and form;

152 And on further suggesting that said judgment is also erroneous in this, that it does not pronounce on the reconventional demand set up by the defendant Watson against plaintiff:

It is ordered by the court that the defendant show cause on the 1st day of June, 1896, at eleven o'clock a. m., why a new trial should not be granted and for general relief.

Reasons for Judgment on Rule for New Trial.

Filed June 24th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

On motion of Remington Paper Co. for a new trial, filed May 15th, 1896—

1st. Movers complain of the title given to their suit. It seems that it was endorsed by the clerk: *In re* Frank H. Pope *vs.* La. Printing and Publishing Co., and numbered 39100, which was the proper docket No., given originally to the proceeding taken for the receivership. This endorsement was written by the clerk who filed the petition of movers over—*i. e.*, above—the endorsement put on the petition by Messrs. Merrick & Merrick, counsel, which was, "Remington Paper Co. *vs.* John W. Watson *et als.* Petition and action of nullity."

I do not see that the style or title is of much moment; but if it should be, I now state that when I gave judgment styling the Remington Paper Co. intervenor, I meant the judgment to be in favor of the defendant sued by that Co. in this case and against said Remington Paper Co.

I will see that the judgment when signed shall leave no doubt in this respect—*i. e.*, as to whom I decided for and whom against.

2nd. The complaint that I did not pass on the reconven-
153 tional demand of John W. Watson is made. My judgment rejecting the demand of the Remington Paper Co. virtually settled, as far as my judgment could, Mr. Watson's demand to be qui-ted in his position as receiver, etc., and there was no necessity for incorporating that in the decree, because no other creditor and no stockholder or any person except the Remington Paper Co. complains or has complained, or attacks or has attacked the appointment.

As to the money demand in reconvention, the allegation is that the La. Printing and Publishing Co., in liquidation, has suffered the damages, and not Mr. Watson personally.

The Remington Paper Co. sued Watson personally for damages. It did not sue him as receiver, and could not without recognizing his capacity as receiver. The def'ts asked to be cited by said Co. were John W. Watson, "calling himself receiver;" Frank H. Pope, and the La. Printing and Publishing Co., Limited. The State of La., through the att'y general, was not made a party to the action to annul, although it was on the State's petition intervening for the great part, and so stated in the order, that I appointed Watson receiver. Nevertheless, this case was tried against Watson, Pope being ignored, the State not joined (if, indeed, it could be). Taking

the case as made up and as contested, I regarded that Watson, sued personally for damages, could not in reconvention demand damages due to the Co. in liquidation (if at all), of which he was receiver, and therefore my intention was to dismiss as of nonsuit his demand for damages. If I am wrong in this, it will present a strange joinder of actions—*i. e.*, the action, 1st, to annul as against Watson, as receiver, and Pope, the pl'ff, the order appointing the receiver, the intervening State of La. not being a party, and, 2nd, the action against Pope and Watson personally for damages.

On the motion for a new trial I will now order the amendment of the title wherever necessary or not so appearing by directing
154 that the style of this suit be: "No. 39100. *In re* Frank H. Pope *vs.* La. Printing and Publishing Co., Limited; Remington Paper Co. *vs.* John W. Watson *et al.*" The judgment rendered preserves this style. Also, 1st, that the judgment be in favor of John W. Watson and Frank H. Pope, rejecting and dismissing the suit of the Remington Paper Co. for damages.

2nd. That the demand of the Remington Paper Co. against John W. Watson, Frank H. Pope, and the La. Printing and Publishing Co., represented by John W. Watson, receiver, for the nullity of the order appointing said Watson receiver, etc., be also rejected and dismissed, and that said appointment and order be maintained.

3rd. That the reconventional demand for money claimed by said Watson, as receiver herein, be dismissed as of nonsuit, and that the Remington Paper Co. be condemned to pay all the costs of this litigation.

In all other respects the motion for a new trial is dismissed and a new trial refused.

N. O., La., June 24th, 1896.

(Signed) T. C. W. ELLIS, *Judge.*

Final Judgment.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

Ex propria motu the court directs amendment of the title of this suit whenever necessary as not so apparent, so as to style same "No. 39100; *In re* Frank H. Pope *vs.* Louisiana Printing & Publishing Co., Ltd.; Remington Paper Co. *vs.* John W. Watson *et al.*," &c.

It is ordered that there be judgment as follows:

1st. In favor of John W. Watson and Frank H. Pope, re-
155 jecting and dsimissing the suit of the Remington Paper Co. for damages.

2nd. That the demand of the Remington Paper Company against John W. Watson, Frank H. Pope, and the Louisiana Printing & Publishing Company, represented by John W. Watson, receiver, of the nullity of the order appointing said Watson receiver, etc., be

also rejected and dismissed, & that said appointment & order be maintained.

3rd. That the reconventional demand for money claimed by Watson as receiver herein be dismissed as of nonsuit, and that the Remington Paper Company be condemned to pay all costs of this suit.

It is further ordered that in all other respects the motion of the Remington Paper Company for a new trial is dismissed at costs of mover.

Judgment rendered June 24th, 1896.

Judgment signed July 2nd, 1896.

(Signed) T. C. W. ELLIS, *Judge.*

Bills of Exception.

Filed July 13, 1896.

Civil District Court, Division A.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellee. } No. 39100.

Bill No. 1.

Be it remembered that on the trial of this case, after the plaintiff had offered in evidence in support of its case, as it stated in the original petition as amended, the duly certified transcript of the suit of the Remington Paper Company against The Louisiana Printing & Publishing Co., Limited, instituted on the 29th day of May, 1893, in due form and on due showing, in the circuit court of the United States for the eastern district of Louisiana; which said transcript, marked "A" and identified with this bill of exception by my
156 signature, and in which said suit plaintiff prayed for judgment against the defendant for thirty-eight hundred and sixty-three and $\frac{55}{100}$ dollars ($3,863.55) debt, and five per cent. (5 %) interest on twenty-four hundred and ninety-six and $\frac{32}{100}$ dollars ($2,496.32) from 14th April, 1893, and the like rate of interest on thirteen hundred and sixty-three and $\frac{83}{100}$ dollars ($1,363.83) from July 12th, 1893, with the vendor's privilege on certain printing paper sold to said defendant, The Louisiana Printing & Publishing Co., Limited, and sequestered in the said suit for the vendor's privilege on said paper and shown by said record, which said debt, with the privilege, due by the said Louisiana Printing & Publishing Co., Limited, to the said Remington Paper Co., was proved by the testimony of Addison Weeks, Nelson R. Caswell, and J. Richard Holden, witnesses for the plaintiff, whose depositions are on file in the case, and which said debt has not been disputed as a debt due by the Louisiana Printing & Publishing Co., Limited, to the Remington Paper Co., but was contended ought to have been presented to said John W. Watson, as receiver of said Louisiana Printing & Publishing Co., Limited; also the privilege arising from the seizure of certain other effects of the said Louisiana Printing & Publishing Co.,

Limited, seized the same day under the writ of attachment also issued in said case, which said transcript of said suit No. 12197 of said circuit court of the United States offered in evidence by the plaintiff is identified with this bill of exception by my signature, as aforesaid; and the said plaintiff, for the purpose of showing their nullity and invalidity, having also offered in evidence the paper purporting by its endorsement on the back thereof to be the petition of Frank H. Pope, signed by Henry L. Garland, as attorney, against the Louisiana Printing & Publishing Co., Limited, the same being *ex parte* and entitled "Application for receiver," and bearing the number 39100, and filed in said civil district court May 17th, 1893, said petition being unaccompanied by affidavits or any proof or parties defendant or prayer for citation, and also having offered for the same purpose the order of the court thereon of the same date; and

157 plaintiff having also offered in evidence the paper filed 18th day of May, 1893, in the court and purporting to be an intervention of the State filed in said *ex parte* proceeding of said Pope and joining said Pope; and also having offered in evidence the petition of said John W. Watson, filed in said civil district court June 6th, 1893, praying for an order of court to fix the amount of the bond for said John W. Watson, as a receiver, and to give him power to appear in court for said Louisiana Printing & Publishing Co., Limited; and having also offered in evidence the order of the judge, indorsed thereon June 6th, 1896, and the bond of said John W. Watson, dated the 9th day of June, 1893, and filed on the same day, which said documents are herewith identified by my signature; and afterwards, on the trial of this case, the defendants offered to read and give in evidence the two documents pleaded by the defendant in the paper filed June 26th, 1893, identified herewith by my signature, purporting to be the signature of certain of the stockholders of said Louisiana Printing & Publishing Co., Limited, but not of all the stockholders of said company, to a consent that said John W. Watson should be confirmed as a receiver of said company, one of the lists being headed by the name of Augustus Craft and the other one by the name of said John W. Watson, defendant; both of said lists, as well as said documents, are identified with this bill of exception by my signature.

And thereupon the plaintiff, by counsel, claiming that its rights were fixed by the due and legal institution of its said suit according to the due process of law in said United States court, on the 29th day of May, 1893, and the seizures the same day under the writs issued in the same court against the Louisiana Printing & Publishing Co., Limited, and that the defendants could not by any acts on their part subsequent to said valid seizure in said court of the United States deprive plaintiff of its privileges and vested rights as a suitor in the said United States court against its debtor, the Louisiana

158 Printing & Publishing Co., Limited, nor interpose nor substitute any other person in the place of plaintiff's debtor, nor compel plaintiff to apply to any other person than its own debtor for payment of its debt, nor cure the nullities and want of authority in said Watson, arising from defendant's utterly *ex parte*

proceeding, without any of the forms of the Louisiana law or any due process of law, and that the plaintiff being invested by the Constitution and laws of the United States and by virtue of its just demand and lawful proceedings against said Louisiana Printing & Publishing Co., Limited, in the said courts of the United States, could not be deprived of its rights by said illegal action, nor could it be deprived of its valuable rights against its debtor by subsequent attempt of the defendant to cure the fatal defects in said *ex parte* proceedings filed on the 17th and 18th days of May, 1893, so as to defeat the Remington Paper Co. of its legal and just rights, objected to the introduction of said documents in evidence on the trial of this case.

But the court was of the opinion that the said documents were admissable in evidence on the part of the defendant and overruled the objection of plaintiff's counsel and admitted the same in evidence; and thereupon the plaintiff then and there excepted to said ruling, and, time having been giving counsel in which to prepare this bill of exception, the same is now presented and allowed and signed *per curiam*. The document purporting to be the intervention of the State of Louisiana was before me May 17, 1893, when I signed the order appointing the receiv*ing*, & should properly have been filed 17 May, '93. This was stated by me at the trial & was proved. The objections of pl'ff's counsel were by me referred to the effect of said documents' legal*ly* & wore held not good as to their admissibility.

N. O., July 13, '96.

(Signed) T. C. W. ELLIS, *Judge*.

Filed July 13, '96.

(Signed) H. MESSONNIER, *D'y Cl'k*.

159 *Bill No.* 2.

And be it further remembered that, on the same trial mentioned in the proceeding bill of exception, the plaintiff having offered in evidence said transcript of the proceedings in said circuit court of the United States in the said case of The Remington Paper Co. against The Louisiana Printing & Publishing Co., Limited, and the act of incorporation identified herewith by my signature, as well as the other evidence and documents set forth in the proceeding portion of this bill of exception, marked "Bill No. 1," and thereupon on said trial the following-named witnesses having been respectively placed on the witness stand, viz:

Jacob E. Fisher, formerly a book-keeper of the defendant company;

C. Harrison Parker, the manager, and

A. A. Woods, a director of the Louisiana Printing & Publishing Co., Limited—

And thereupon said witness, Fisher, being on the witness stand, was asked by Henry L. Garland, Esq., the counsel of the defendand, the question, "Did you know or see any indication or fraud or mis-

management on the part of the directors or officers or employees of that association?"

To which said question said plaintiff's counsel objected on the ground that witness' testimony would depend on what he conceived the law to be bearing on the facts, and that the question of fraud will depend on the state of facts to be developed before the court, and that this kind of negative testimony is inadmissible, and it was further contended that the intention of the Louisiana Printing & Publishing Co., Limited, could only be ascertained by the action of the corporation through its board of directors and the action of its officers and agents as such, without regard to the thoughts and intention of individuals, and the same objections were urged against the admission of the testimony of each of said witnesses;
160 but said objections were overruled by the court on the ground that they went to the effect rather than the admissibility.

During the argument of the objections just disposed of the court asked counsel representing the Remington Paper Co. if they were willing to put upon the record a disclaimer of any attack against the gentlemen concerned with the management of this paper company as to fraud and willing to acquit them of any intentional wrong-doing in the management of the concern, and after some deliberation counsel announced that they did not know; that they were not prepared to go to that extent, at the same time expressing personally their own appreciation of those gentlemen, and that personally they did not desire to so charge them, and counsel refusing to put this disclaimer upon the record, the court admits it just to allow the gentlemen connected with the management to show everything which they can in their own defence & *per curiam* to justify if possible the action of said La. Printing & Publishing Co.'s manager & directors in the matter of their bringing about the receivership, & etc.

To which ruling counsel for plaintiff excepts and reserves this his bill of exceptions.

July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Filed July 13, '96.

(Signed) H. MESSIONIER, *D'y Cl'k.*

And the said witnesses, Jacob E. Fisher, formerly book-keeper of the Louisiana Printing & Publishing Co., Limited; C. Harrison Parker, manager, and A. A. Woods, a director, of said Louisiana Printing & Publishing Co., Limited, were thereupon each respectively examined on said trial as witnesses, and their testimony tended to show that each of said witnesses individually, in his own opinion, acted in good faith in his management of and conduct towards the Louisiana Printing & Publishing Co., Limited, and creditors thereof in all his acts on his part as an agent or officer of said corporation, and each of said witnesses denied having
161 any knowledge of any fraudulent conduct on the part of said defendant company; and also the said defendant, John W.

Watson, claiming, as aforesaid, to be a receiver of the said Louisiana Printing & Publishing Co., Limited, during the trial of this case was placed on the stand as a witness for the defense.

And the said Watson, witness on the stand, claiming to be the receiver of the Louisiana Printing & Publishing Co., Limited, was asked the following question by his counsel, Mr. Garland:

"Have you been guilty of any collusion or conspiracy with anybody to have any creditor of this concern paid by preference over any others?"

To which said question the plaintiff's counsel objected that as plaintiff's rights were fixed by the condition of things at the commencement of its suit in the said United States circuit court on the 29th day of May, 1893, and that on the 9th day of June, 1893, this suit was commenced, that the question propounded involved a question of law to be submitted to the opinion of the witness; that the testimony was of a negative character and depended on the legal construction of the facts developed in this case, and was irrelevant to the issue, which could not be decided by the opinion of the witness, but must be decided by the court, and that no cause of action had been alleged nor set up in said reconventional demand.

But the court was of the opinion that considering the nature of the action, damages being claimed of said defendants, Watson and Pope, that the said question was admissible, and that the said witness should be allowed to answer the same; to which said ruling plaintiff excepted.

And thereupon said Watson answered the said question, "I have not."

And thereupon, on the same trial, said defendant-' counsel asked the same witness the further question, "Have you paid out any funds realized from this insolvency except by order of court?"

Which said question was objected to by plaintiff's counsel for the reasons previously urged to the testimony, and that the very
162 fact of the said claim to the right of said Watson to represent the said Louisiana Printing & Publishing Co., Limited, was at issue, plaintiff claiming its rights under the jurisdiction of the courts of the United States, which could not be affected or ousted by the subsequent acts of the parties or others in the courts of the State of Louisiana or any orders therein obtained.

But the court was of the opinion that said question was legal and permitted the same to be asked, and the plaintiff's counsel then and there excepted to the opinion of the court and reserved a bill of exception to be drawn at a future day, the said witness answering said question in the *ow*rds "I have not."

And on and during the same trial said Henry L. Garland, Esq., defendants' counsel, offered to read and introduce in evidence in this case the following documents, viz: A document entitled "Division A, civil district court for the parish of Orleans—

"Frank Pope *vs.* The Louisiana Printing & Publishing Company, rule of Lyons & Norwood, filed September 14th, 1893, H. Messionier, d'y clerk," and my decree thereon, dated September 19th,

1893, which said rule and decree, indorsed thereon in full, I have identified with this bill of exception by my signature.

And the plaintiff, by counsel, objected to the introduction of said documents in evidence as a defense to this action on the ground that plaintiff's rights were fixed by the said proceedings of the plaintiff in the said circuit court of the United States, which could not be lawfully affected or deprived of jurisdiction by the conduct of the defendant- or other parties or any subsequent proceedings by the defendants or others in any other court or jurisdiction than the courts of the United States, which were alone seizured of jurisdiction to the exclusion of all other persons by the commencement of the said suit of petitioner in the said circuit court of the United States and the matters at issue in that case.

But the court, being of the opinion that said testimony
163 was admissible on the part of the defendant-, admitted the same in evidence; to which said ruling of the court the plaintiff, by counsel, excepted, and, leave being granted to prepare the bill of exception at a future day, the said bill as prepared for an allowance is now presented and allowed *per curiam*. I held that as to the documents the objection shall go to the legal effect, & as to the oral testimony that it was adjudged in mitigation of damages & to repel the damages & to justify def'ts' action in the matter complained of by pl'ff.

July 13, '96.

(Signed) T. C. W. ELLIS, *Judge*.

Filed July 13, '96.

(Signed) H. MESSIONIER, *D'y Cl'k*.

Bill No. 3.

And be it further remembered that during and on the same trial the defendant-, John W. Watson *et al.*, offered to read and give in evidence, to sustain their defence to the said action of said Remington Paper Co., the following documents:

The rule taken on the 14th day of September, 1893, by Thos. B. Lyon and W. K. Horn, and served September 16th, 1893, and answer to the said rule for contempt of court, filed 19th day of September, 1893; also the answer of said J. B. Donnally, filed 19th September, 1893, and also the rule of Lyon & Norwood, filed on the 14th of September, 1893.

The ruling of the court on the rule of T. B. Lyons and D. J. Norwood and the order of the judge, Thos. C. W. Ellis, 26th September, 1893.

The oath of office of the appraisers appointed May 17th, 1893.

Also the bill of exception of the Remington Paper Co. to the proceedings in the rule of said T. B. Lyons and D. J. Norwood, filed October 12th, 1893; all of which said papers and documents are identified with this bill of exception by my signature; and thereupon, then and there, on the trial the said plaintiff, The Remington

Paper Company, objected to the introduction of said documents in evidence, for the purpose of defence, on the ground
164 that they are irrelevant to this action under the pleadings; the reconventional demand shows no cause of action; that said John W. Watson has no right to stand in judgment for said Louisiana Printing & Publishing Co., Limited, and that the proceedings of said civil district court, now invoked by defendants, are subsequent to the orders of the court alleged by plaintiffs to be *ex parte* and null, and are attacked by this suit filed on the 9th day of June, 1893.

But the court, for the reasons previously given, overruled the said objection and admitted said documents in evidence; to which said ruling the plaintiff excepts, and time having been given in which to prepare this bill, *which* is now allowed and signed.

N. Orleans, July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Filed July 13, '96.

(Signed) H. MESSIONIER, *D'y Cl'k.*

Bill No. 4.

And be it further remembered that on the said trial of this case the book of the minutes of the board of directors of Louisiana Printing & Publishing Co., Limited, was presented in court by the defendants, and the resolutions, of which the annexed resolutions are copies, and identified by me with this bill of exception by my signature, were offered in evidence by the plaintiff, viz:

Resolution of May 1st, 1892, from page 62.
" " June 20th, 1892.
" " August 27th, 1892.
" " January 30th, 1893.
" " May 16th, 1893, and also—

Report of Wm. G. Vincent, chairman, and others, marked "Loose resolution;" a typewritten letter signed "The New Orleans Delta Company, C. Harrison Parker, per pro McDonald."

165 Also letter of Jas. D. Hill to Henry McCall, April 29th, 1893; all of which said documents are herewith identified by my signature.

And it was contended by plaintiff's counsel on the trial and argument of the case that the rights of the plaintiff were fixed and secured by the service of the process of sequestration and attachment from the said circuit court of the United States for the eastern district of Louisiana against the Louisiana Printing & Publishing Co., Limited, on the 29th day of May, 1893, and that said plaintiff could not be deprived of its rights so fixed by any subsequent acts of the defendant or any of them by their acts subsequent thereto nor by any proceedings in any other jurisdiction.

And be it further remembered that on the whole case as stated in the said several bills of exception, as well as on plaintiff's motion for a new trial, the court denied and overruled the plaintiff's demand and rendered a judgment in favor of the def dants, except on the

reconventional demand; to which said ruling the plaintiff excepted and tendered to the court this bill of exception, which, time having been given, is now allowed and signed. The pl'ff has never appealed from the order of May 17, 1893, appointing the receiver, & the court, for the reasons assigned in writing, on the def'ts' exception & on the merits & on the motion for a new trial, which are annexed and made part of these bills of exception, held in favor of def't- & against the pl'ff.

N. Orleans, July 13, '96.

(Signed) T. C. W. ELLIS, *Judge.*

Petition for Suspensive Appeal.

Filed July 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

166 To the honorable the civil district court for the parish of Orleans:

The petition of the Remington Paper Company respectfully represents—

That your petitioner feels aggriev-d at the final judgment rendered in this case on June 24th, 1896, and signed July 2nd, 1896, and desires to take a suspensive appeal therefrom to the supreme court of the State of Louisiana.

Wherefore your petitioner prays that citation may issue if needed, and that a suspensive appeal be granted to your petitioner to the supreme court of Louisiana; that the amount of the appeal bond and the return day be fixed by the court, and for all general relief.

(Signed) MERRICK & MERRICK, *Att'ys.*

Order on Petition for Suspensive Appeal.

Let a suspensive appeal be granted to the petitioner, The Remington Paper Company, from the judgment herein rendered June 24, 1896, & signed July 2, 1896, returnable to the honorable the supreme court of the State of Louisiana, at New Orleans, La., on the first Monday of November, 1896, upon petitioner giving bond & security as the law directs in the sum of three hundred dollars ($300.00).

New Orleans, La., July 13th, 1896.

(Signed) T. C. W. ELLIS, *Judge.*

Services accepted; citation waived.

(Signed) B. R. FORMAN, *Att'y.*
H. L. GARLAND, JR., *Att'y.*
WM. K. HORN,
Att'y for Absent Creditors.

167 *Appeal Bond.*

Filed July 13th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 39100.

Know all men by these presents that we, The Remington Paper Company, as principal, and Edwin T. Merrick, Senior, as surety, are held and firmly bound unto Pail O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of three hundred — no $\frac{}{100}$ dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal- and dated, in the city of New Orleans, on this thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas the above-bounden Remington Paper Company have this day filed a petition of appeal from a final judgment rendered against them, rendered in the suit of Remington Paper Company *vs.* John W. Watson *et al.*, No. 39100 of the civil district court for the parish of Orleans, on the twenty-fourth day of June, 1896, and signed on the second day of July, 1896:

Now, the condition of the above obligation is such that the above-bound Remington Paper Company shall prosecute their suspensive appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of their estate, real or personal, if they be cast in the appeal; otherwise that the said Edwin T. Merrick shall be liable in their place.

(Signed) REMINGTON PAPER COMPANY,
Per MERRICK & MERRICK. [SEAL.]
EDWIN T. MERRICK, SR. [SEAL.]

Signed, sealed, and delivered in the presence of—
—— ——.

168 *Agreement of Counsel as to What Documents Will Go to the Hon. the Supreme Court in Original Form.*

Filed August 19th, 1896.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

It is agreed that in order to save costs on the appeal taken by the plaintiffs in this case to the Supreme Court that the following docu-

ments, offered in evidence in this case on the trial thereof and identified as parts of the bills of exception to which they respectively belong by the signature of Judge T. W. C. Ellis, do go up to said Supreme Court in original, viz:

First. The transcript of the proceedings in the suit of The Remington Paper Company against The Louisiana Printing & Publishing Co., Limited, in the circuit court of the United States for the fifth circuit and eastern district of Louisiana, and marked "A" and identified by the signature of said Judge Ellis.

Second. Also the document purporting to be the petition of Frank I. Pope, signed by Henry L. Garland, as attorney, against the Louisiana Printing & Publishing Co., Limited, filed May 17th, 1893, and the orders of the judge thereon, as stated in said bill of exceptions, and the intervention and order appearing to be filed May 18th, 1893, and the petition of said Watson, filed June 6th, 1893, and order thereon.

Third. The rule taken 14th day of September, 1893, by Thos. B. Lyons and D. J. Norwood, and served September 16th, 1893, and answer to said rule for contempt, filed 19th day of September, 1893, and answer of the said J. B. Donnally, marshall of the United States, filed 19th September, 1893; also the rule of Lyons and Norwood and the ruling of the judge thereon, and the order of Judge T. C. W. Ellis, 26th September, 1893.

Fourth. The residue of the testimony, to be copied in the
169 transcript of appeal by the clerk.

And it is further agreed that if either party discovers or shall need any other part of the record, if such there be, the same may be supplied by the clerk at the instance of the party, without a formal order of certiorari.

For plaintiffs and appellant,

MERRICK & MERRICK, *Att'ys.*

For defendant- and appellees,

(Signed) H. L. GARLAND, JR.,
For Appellees.

Written Instructions of Messrs. Merrick and Merrick, Counsel for Appellant, as to the Making of Transcript.

Civil District Court, Division "A."

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET ALS., Appellees. } No. 39100.

To Mr. Rankin, d'y clerk:

In making up the record in the case of Remington Paper Company against John W. Watson and others, 39100 of the civil district court, the title page of the transcript, in order to conform to the record, must be in the name of the plaintiffs and defendants in this an original suit, and not an intervention in another suit.

See form for the heading on the next page for the title of the

suit. The clerk is directed by Judge Ellis to make the corresponding corrections. See the directions of the judgment annexed to the original petition in this case, filed June 9th, 1893, and judgment signed July 2, 1896.

Transcript in the Civil District Court for the Parish of Orleans.

REMINGTON PAPER COMPANY, Appellant, } No. 39100.
vs.
JOHN W. WATSON ET ALS., Appellees. }

170 Merrick and Merrick, att'ys for plaintiff and appellant, and Henry L. Garland and W. K. Horn, att'ys for defendant-and appellees.

In making up this record:

1. Copy original petition, filed June 9th, 1893, under the endorsement only of the title in the handwriting of E. T. Merrick, Jr. (viz.), "Remington Paper Co. *vs.* John W. Watson *et als.*; petition and action of nullity and the filing by Mr. Rankin.

2. The amendments to the same, filed 24th day of May, 1893, and another, filed July 1st, 1893; also exception, filed June 1st and 12th, 1893; also answer of Pope, filed 4 May, 1894, and also John W. Watson'- answer and reconventional demand. These documents are tied together and marked 1, 2, 3, and 4.

Copy also the depositions from New York, on file, offered by plaintiff (viz.), of Addison Weeks, Nelson R. Coswell, and J. Richard Golden; copy also the residue of the testimony under clause fourth of the agreement.

No parts of the Pope suit are to be copied into this record except such as have been offered in evidence by the parties, as shown by the notes of the testimony in the case; which testimony must be examined by the clerk himself, and all of it which was offered and which does not go up in original must be copied in this record; so must the motion for a new trial be copied.

As to the decree: It is annexed to the original petition and dated July 2, 1896; only that part of the judge's opinion filed May 15, 1896, need be copied.

The old opinion, filed in Sept., 1893, is already in the Supreme Court and need not be copied.

The resolutions from the minutes on file and mentioned
170½ in the bills of exception must be copied.

(Signed) MERRICK & MERRICK,
For Plaintiff.

Clerk's Certificate.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing two hundred pages do

contain a true, correct, and complete transcript of all the proceedings had, documents filed, excepting extract from book called advertising ledger (said book not in possession of this office), and evidence adduced upon the trial of the cause wherein Remington Paper Company is plaintiff and appellant and John W. Watson *et al. is* defendants and appellees, instituted in this court and now in the records thereof under the No. 39100 of the docket of this honorable court, in accordance with agreement of counsel copied on folio 197, and also with written instructions of counsel for appellant copied on folio 199 of this transcript.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this first day of December, in the year of our Lord one thousand eight hundred and ninety-six, and in the one hundred and twenty-first year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. C. PEYTON, *D'y Clerk.*

171 *Transcript of Record No.* 12197 *of the United States Circuit Court.*

Offered in Evidence by Plaintiff.

Filed March 13th, 1896.

REMINGTON PAPER CO.
vs.
THE LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197. At Law.

Petition.

Filed May 29, 1893.

To the honorable the judges of the circuit court for the fifth circuit and eastern district of Louisiana:

The petition of Remington Paper Co., a corporation created by and organized under the laws of the State of New York, and located and resident at Watertown, New York, and a citizen of said State of New York, respectfull- represents—

That the Louisiana Printing and Publishing Company, Limited, a corporation created by and organized under the laws of the State of Louisiana, and located and resident in the parish of Orleans and a citizen of the State of Louisiana, and recently engag*de* in publishing a newspaper called the "New Delta," is indebted to your petitioner in the sum of thirty-eight hundred and sixty-three $\frac{55}{100}$ dollars, with five per cent. interest on twenty-four hundred and ninety-six $\frac{72}{100}$ dollars from April 14th, A. D. 1893, till paid, and also the same rate of interest on $1,366.83 from July 12th till paid and costs for this, viz:

That on or about the 23rd day of May, 1893, at New Orleans, your petitioner contracted, sold, and delivered at New Orleans,

through its agent, Addison L. Weeks, six or more certain car-
172 loads of printing paper for said sum and price of thirty-eight hundred and sixty-three $\frac{55}{100}$ dollars.

That your petitioner received as additional evidence for a part of said claim three (3) promissory notes for $751.79, $745.01, and $621.82, maturing May 6th, June 1st, and July 12th, 1893, respectively, all of which will more fully and at large appear from the statement annexed to this petition and marked "A" and made a part hereof, for greater certainty, and from said notes to be hereafter annexed and made a part hereof.

Your petitioner alleges amicable demand in vain. Your petitioner shows that it has a vendor's lien on said paper in the possession of the Louisiana Printing and Publishing Company, Ltd., and fears said defendant will conceal, part with, or dispose of the said paper in its possession during the pendency of this suit.

That the Louisiana Printing and Publishing Company, Limited, has mortgaged, assigned, or disposed of or is about to mortgage, assign, or dispose of its property, rights, and credits or some part thereof, with intent to defraud its creditor- or give an unfair preference to some of them.

Wherefore, the annexed bond and affidavit considered, your petitioner prays that a writ of attachment may issue in the usual form commanding the marshal to seize all species of property—real or personal—rights, or credits, however held, belonging to said Louisiana Printing and Publishing Company, Limited, lately engaged in publishing the newspaper call- the "New Delta," and that also a writ of sequestration issue commanding said marshal to seize so much of the said printing paper as may be found unused in the publication of said New Delta, and that a citation issue to said de-
fendant to appear and answer this petition according to law,
173 and that, after due proceedings had, the said Louisiana Printing and Publishing Company, Limited, be ordered, adjudged, and decreed to pay to your petitioner the said sum of thirty-eight hundred and sixty-three $\frac{55}{100}$ dollars and interest as aforesaid, and that the property attached as well as the property sequestered be held and sold to pay the privilege secured by said attachment and the vendor's privilege under the sequestration, and for general relief in the premises.

(Signed) By MERRICK & MERRICK,
Att'ys for Plaintiff.

Personally came and appeared before me Addison Weeks, who, being first duly sworn, deposeth and saith that the Remington Paper Co. of New York is a corporation created by the laws of New York and domiciled out of the State of Louisiana, and is absent from the State; that affiant is the agent of said Remington Paper Company; that the Louisiana Printing and Publishing Company, Lim., a corporation organized under and created by the laws of Louisiana and domiciled in the parish of Orleans, is indebted to the Remington Paper Company in the sum of three thousand eight hundred sixty-three and $\frac{55}{100}$ dollars for paper sold and delivered them at New

Orleans, in the State of Louisiana, as will more fully and at large appear by the annexed statement; that The Remington Paper Company, the plaintiff herein, has a vendor's lien and privilege on whatever part of said paper which remains in the possession of the Louisiana Printing and Publishing Company, Ltd., The defendant in this case, and that affiant fears defendant will conceal, part with, or dispose of the said paper in its possession during the pendency of this suit; that the Louisiana Printing and Publishing Company, Limited, has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, its property, rights, and cred-
174 its or some part thereof with intent to defraud its creditors or give an unfair preference to some of them.

(Signed) ADDISON WEEKS.

Sworn to and subscribed before me this 27th day of May, 1893.

[SEAL.] (Signed) EDWIN P. MERRICK, JR., *N. P.*

Statement Annexed to Petition and Marked "A."

Statement.

WATERTOWN, N. Y., *May* 19, 1893.

New Delta, New Orleans, La., in acc't with Remington Paper Co., under the laws of N. Y.

Terms, —.

1892.					
Dec.	10.	To 33,305 at 3c.....	$999	15	Less f'g't.
1893.					
Feb.	3.	" 31,097 " 3c.....	932	91	"
Mar.	17.	" 29,742 " 3c.....	892	26	"
			2,824	32	2,824 32
		CREDIT.			
Apr.	14.	By f'g't bill, Feb. 3.....	123	98	
"		" note for bill, Feb. 3	621	82	
"		" 2,517 waste "	75	51	
					821 31
					2,003 01
		Less freight, 2 car-loads			258 08
					1,744 93

We hold notes as follows:

	Due May 6th	$751	79	
175	Due June 1st	745	01	
	" Jan'y 12th	621	82	
				2,118 62
[SEAL.]				$3,863 55

NEW ORLEANS, *May 29th*, 1893.

Let a writ of sequestration and a writ of attachment issue in this case, as prayed for, upon plaintiff's furnishing bond, with good and solvent security, in the sum of five thousand dollars and according to law.

(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for Writs of Attachment and Sequestration.

Know all men by these presents that we, Remington Paper Company, as principal, and R. M. Walmsley, of the city of New Orleans and parish of Orleans and State of Louisiana, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto E. R. Hunt, clerk of the circuit court of the United States, eastern district of Louisiana, and his successors in said office, in the sum of five thousand dollars, lawful money of the United States of America; for which payment, well and truly to be made, to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals and dated this 29th day of May, 1893.

Whereas the said Remington Paper Company has this day presented a petition to the civil district court for the parish of Orleans praying *a* writs of attachment and sequestration to issue against the Louisiana Printing and Publishing Company, Limited:

Now, the condition of the above obligation is that we, the above-bound principal and surety, will well and truly pay to the
176 said clerk or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us in case it should be decided that the said writs were wrongfully obtained, or either of them.

(Signed) REMINGTON PAPER COMPANY, [SEAL.]
Per MERRICK & MERRICK, *Att'ys.*
R. M. WALMSLEY. [SEAL.]

Writ of Attachment.

Issued May 29th, 1893.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

REMINGTON PAPER CO.
vs. } No. 12197.
THE LOUISIANA PRINTING AND PUBLISHING CO.

The President of the United States to the marshall of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to attach and take into your possession, according to law, the property, rights, and credits of the de-

fendant, The Louisiana Printing and Publishing Company, that may be found within our said district, to satisfy the claim of the plaintiff, The Remington Paper Company of Watertown, State of New York, amounting to the sum of thirty-eight hundred and sixty-three $\frac{55}{100}$ dollars, with interest thereon, at the rate of — per cent. per annum, from the — day of —— until paid, and costs, and to hold the same to satisfy the judgment of the court in the premises.

177 And of your acts and doings herein that you make due return according to law. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, this 29th day of May, 1893.

(Signed) E. R. HUNT, *Clerk.*

Marshall's Return.

Received by U. S. marshal, New Orleans, La., May 29, '93, and on the same day I attached and took into my possession the articles, goods, etc., as set forth in the inventory hereto, and served notice of said seizure on the Louisiana Printing and Publishing Company by handing same — J. D. Hill, president thereof, in person in New Orleans, La.

Inventory of Goods, etc., in the New Delta Office.

Office fixture-.

1 counter, 1 standing desk, 1 double standing desk, 1 (small) double standing desk, 1 roll-top desk, 1 locker, 1 iron safe, 1 caligraph machine, 1 letter press, 4 revolving stools, 2 large armchairs, 3 old chairs, 1 stool, 1 clock, 1 stove and piping, 3 waste baskets, 2 cuspidors, 11 letter files, 1 city directory, 1893; 1 file of sundry articles, old papers, etc.

In the mailing-room.

6 old tables, 1 water cooler and filter, three and one-half bundles of manilla wrapping paper, 1 lot of shelving and old newspapers, 1 small armoir-, 1 broom and water bucket, 2 fire-extinguishers.

In the press-room.

One large Gauze and Klipper printing press, 5 & ½ rolls large printing paper (unused), 3 small rolls of printing paper, 21
178 rollers for press, lot of shafting, pullie-s, & belting, 1 wetting machine, 1 crane, chair, and block, one upright engine (12)-horse power, one steel boiler (15)-horse power, 1 poker, shovel, and ash puller, one lot of oiling cans, one lot of old belting, one wheelbarrow, 4 & ½ barrels of printing ink, 15 barrels of coal, one lot of sundries, junk, etc.

In the ware-room.

One double-cylinder "Hoe press," one small platform scale, one lot of old paper, one old table, pigeon-hole stand containing a lot of old papers, one wheelbarrow, 2 ladders, 2 fire-extinguishers, one lot of old waste paper, one barrel of type-metal scim-ings, 5 broken chairs, and one old stove.

In the editor's room.

One sitting desk, roll top; one leather-seat revolving chair; one Remington typewriter, one Smith Premier typewriter, four small tables, five large armchairs, four small wooden stools, one Webster's Unabridged Dictionary, six Appleton's Cyclopedia-, 10 vols. American-ized Encyclopedias Britan-ica, one lot of cuts of prominent persons, 2 lots of assorted books and shelving, one lot of stereotype cuts, one lot of paper files and rack stands, 1 clock, 2 fire-extinguishers, one lot of old papers, 2 photos in frame, and large porcelain globe.

In room No. one.

8 tables, one revolving chair, one armchair, one lot of old papers, one cuspidor, one coal bucket, 3 paper files, one lot of Congressional Records, 2 fire-extinguishers.

In the reporters' room.

2 small desks, one double desk, 2 revolving armchairs, 3 small tables, one large table, one chair, one Webster's Unabridged 179 Dictionary, one lot of pamphlets and old books, 3 paper files, one washstand and bowl, 2 fire-extinguishers, one water bucket, 2 cuspidor-, 2 wash baskets, one water cooler, and one water filter and cooler.

In the stereotype-room.

One broken steam table, one new steam table, one furnace and metal pot, one shaving machine, one elevated table, one cast box, one saw-plate stand, one trimmer roller, one set of pots, ladle, and outfit, one flat bed and casting box, one lot of tools, wal-et, hammer, and saws, one cabinet with zinc-lined drawers, four belts, 2 shaftings, 7 pulleys, 16 iron rolling tables, 16 iron chases, one imposing stone and table, one vise, one trough, one zinc table, one shovel, one small desk, one lot of new type in boxes, eight cases of type and two stands, two water coilers and filters, one lot of type sticks, one lot of small blankets, one ladder, one lot of sundry articles, metals, etc.

In the composition-room.

234 filled type cases, 25 type stands, one imposing stone and table, six galley tables, 3 galley racks, 2 type racks, one large lot of new type in boxes—"nonpariel," "minion," and "agate;" 54 galleys, one proof press, one lot of ad. cuts (private parties), 2 desks, one large lot of leads, 14 cigar boxes of type, one stand of assorted

cuts, 9 stools, 2 chairs, one box of take numbers, 30 cigar boxes of assorted type (new and old), one lot of brass, 3 fire-extinguishers, one lot of plate metal and broken leads, one bucket and cup, one lot of old papers, files and hammers, etc.

Mail galley-room.

One stand, 5 cases of tyye, one table and shelving, one proof press, one galley rack, one washstand and pitcher, one ink
180 slab, one chair, one lot of gas piping, and one fire-extinguisher.

Upon trial of the exception herein filed, this honl. court rendered the following order: "The order of this court therefore is that the marshal restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the pl'ff applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs." Upon application being made by pl'ff to the civil district court, the judge thereof denied the right of the marshal to retain custody of the above effects and recognized the receiver as the legal custodian thereof. Upon trial of the rule for contempt in the civil district court, the court ordered the marshal to cease and desist from all interference with John W. Watson, receiver, in the possession of said property. From this judgment the court refused pl'ff the rights of appeal, and after retaining the property until Sept. 23, '93, and pl'ff not indemnifying me in the holding of same any longer, I returned same to John W. Watson, as per the judgment of the civil district court.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By T. J. GALBRETH, *Dy.*

Writ of Sequestration.

Issued May 29th, 1893.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

181 REMINGTON PAPER CO.
vs.
THE LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 12197.

The President of the United States to the marshall of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to sequester and take into your possession, according to law, so much of the printing paper as may be found, unused, in the publication of the New Delta.

And the same safely keep until the further order of the court in the premises, and that you make due return of all your acts and doings herein according to law.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the Supreme Court of the United States, this 29th day of May, A. D. 1893.

(Signed) E. R. HUNT, *Clerk.*

Inventory.

5½ rolls large printing paper (unused).
3 small rolls " "

Inventoried in presence of—
(Signed) T. J. GALBREATH.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., May 29, '93, and on the same day I executed the within writ by seizing and taking into my custody 5½ rolls large printing paper (unused) and 3 rolls (small) printing paper (all found on the premises, in the office 182 & 183 lately occupied by the New Orleans New Delta), all of which I inventoried in the presence — T. J. Galbreth and T. S. Delony, competent witnesses, and served notice of said seizure on the Louisiana Printing and Publishing Co. by handing same to J. D. Hill, president, in person, in New Orleans, Louisiana. This property having been previously placed in the hands of a receiver by the civil district court of this city and the said court having directed that the marshal was wrongfully in possession of same, I restored same to the custody of the said receiver.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By T. J. GALBRETH, *D'y.*

Citation.

Issued May 29th, 1893.

UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

REMINGTON PAPER CO.
vs. } No. 12197.
THE LOUISIANA PUBLISHING AND PRINTING CO.

The President of the United States of America to the Louisiana Printing and Publishing Company, New Orleans, Louisiana, Greeting:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to de-

liver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the
184 service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of May, A. D. one thousand eight hundred and ninety-three, and Independence of the United States of America the 117th year.

Teste:

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., May 29, '93, and on the same day I served a true copy of the within citation and an accompanying petition on the Louisiana Printing — Publishing Company, through J. D. Hill, president thereof, by handing the same to him in person, at his residence, cor. St. Joseph & St. Charles —, in the city of New Orleans, La., and leaving the same in his hands.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By J. E. BOEHLER,
D'y U. S. Marshal.

Motion to Quash Attachment and Sequestration.

Filed May 30, 1893.

U. S. Circuit Court for the Eastern District of La.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 12197.

185 On motion of John W. Watson, receiver of the Louisiana Printing and Publishing Co., Limited, duly appointed by the civil district court for the parish of Orleans, in the proceedings entitled *In re* Frank H. Pope *vs.* Louisiana Printing and Pub. Co., Limited, No. 39100 of the docket of said court, division E, on May 17th, 1893, and on suggesting to the court that mover, since May 17th, 1893, has been and now is in possession of all the assets and property of said Louisiana Printing and Publishing Co., Limited, under and by virtue of his appointment as receiver in said proceedings, and that mover holds and has custody of said assets and property for and as the officer of the said civil district court for the parish of Orleans and has had such position continuously since his appointment on May 17th, 1893;

Further suggesting that, notwithstanding the appointment of mover as receiver of said company, and notwithstanding the pos-

session by mover of the assets and property of said company in his capacity of receiver thereof, as aforesaid, and notwithstanding that all the property and assets of said company are in the custody and control of said civil district court for the parish of Orleans, through mover as receiver appointed by said court, the plaintiff in the above entitled and numbered suit in this honorable court has prayed for and obtained from this court an order of attachment and sequestration of the property so in the custody and possession of mover as the receiver of the civil district court for the parish of Orleans, as aforesaid; that the seizure of said property and assets in the suit in this court, after the appointment of a receiver by the civil district court for the parish of Orleans, is null and void, and should be at once released and set aside as having been made in violation
186 and disregard of the jurisdiction, custody, and control of the civil district court for the parish of Orleans, first exercised on the property herein attached; and on showing to the court the record of the proceedings wherein mover has been appointed as receiver as aforesaid—

It is ordered that the attachment and sequestration and seizure herein made of the property and assets of the said Louisiana Printing and Publishing Co., Limited, be, and the same is hereby, ordered to be released and set aside.

Let this rule be filed, and let the Remington Paper Co., through their attorneys, Merrick & Merrick, show cause on Thursday, June 1st, 1893, at 11 a. m., why the above motion should not be granted.

New Orleans, May 30, 1893.

(Signed) EDWARD C. BILLINGS, *Judge.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., May 31, '93, and I served copy hereof by handing same to E. T. Merrick, Jr., a member of the firm of Merrick & Merrick, att'ys of record for pl'ff.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By T. S. DELONY, *D'y.*

Endorsed: Signed for identification as being referred to by me in bill of exceptions No. 1. (Signed) Edward C. Billings, judge.

Order: Continuance.

Extract from the Minutes, April Term, 1893.

187 NEW ORLEANS, THURSDAY, *June 1st*, 1893.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

REMINGTON PAPER CO.
vs. } No. 12197.
LA. PRINTING & PUBLISHING CO.

On motion of counsel for receiver, no objection being made—

It is ordered that the rule to set aside the writs of attachment

and sequestration be continued to Saturday, June 3, 1893, at 11 a. m.

Exception.

Filed June 3, 1893.

U. S. Circuit Court, Eastern Dist. of La.

REMINGTON PAPER COMPANY
vs.
THE LA. PRINTING AND PUB. COMPANY, LIM. } No. 12197.

The plaintiff in this case, for the purpose only of objection to the regularity of the rule taken by John W. Watson, calling himself receiver, by way of exception, says—

That said mover as a pretended receiver cannot interfere in the progress of this suit in the informal and summary manner attempted by him in his said rule, nor has he any right to be heard to demand by the judgment of this court anything of this court without coming into court by regular process and proceedings and in the mode allowed by law, wherein the plaintiff will be entitled to a trial of questions of law and fact in the mode and manner guaranteed by the constitution and prescribed by law.

Wherefore this plaintiff says that this rule taken by said John W. Watson should and ought to be dismissed at the costs of said mover.

188 (Signed) MERRICK AND MERRICK, *Att'ys.*

And in the event the foregoing exception to said rule is overruled and this plaintiff is required by your honorable court to answer the same, and not otherwise, this plaintiff denies the allegations contained in said rule and denies that said John W. Watson, the pretended receiver, has any legal right or authority under the *ex parte* proceeding on which he relies to take possession of the property attached in this case nor to hinder or delay your petitioner from collecting its just debt against said defendant.

(Signed) MERRICK & MERRICK, *Att'ys.*

Endorsed: Signed for identification as being referred to by me in bill of exceptions No. 1. (Signed) Edward C. Billings, judge.

Hearing on Motion to Quash Writs and on Exception and Continuance.

Extract from the Minutes.

SATURDAY, *June 3rd*, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

This cause came on to be heard upon the rule taken by J. W. Watson, rec'r, to set aside the writs of attachment and sequestration

issued herein and on the exception filed by plaintiff, Merrick and Merrick appearing for the plaintiff, H. L. Garland, Jr., for
189 —, and after hearing the pleadings and evidence and arguments of counsel in part, the court ordered the case to be continued to Monday, June 5, 1893, at 12 m., for further hearing.

Submission of Rule to Set Aside Writs and Exception.

Extract from the Minutes.

MONDAY, *June* 5, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

This cause came on this day to be further heard upon the rule to set aside the writs of attachment and sequestration and upon the exception, and was argued by counsel and submitted when the court took time to consider.

Transcript of Proceedings in the Civil District Court, Parish of Orleans, In re Frank H. Pope vs. Louisiana Printing and Publishing Company, Limited.

Offered by Defendant and Filed June 5, 1893.

(Stamps.)

Application for Receiver.

Filed May 17, 1893.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, City of New Orleans.

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, LIMITED. } No. 39100. Division "A."

190 To the honorable judges of the civil district court for the parish of Orleans:

The petition of Frank H. Pope, a resident of the city of New Orleans, with respect represents—

That the Louisiana Printing and Publishing Company, Limited, a corporation organized under the laws of the State of Louisiana, and particularly under the act of 1888, providing for the organization of corporations of limited liability, is justly and truly indebted unto your petitioner in the full sum of six hundred dollars.

That said Louisiana Printing and Publishing Company, Limited, is domiciled in the city of New Orleans, within the jurisdiction of this honorable court.

That said corporation is utterly insolvent; that it has property and assets within the jurisdiction of this honorable court.

That said property and assets and the fund hereinafter purposed to be distributed exceed two thousand dollars in value.

That the directors and officers of said corporation, being unable to agree on the management and administration of said corporation, have resigned their positions and abandoned their trusts, and in consequence there is no one now to take charge of and represent said corporation and to protect its interest.

That several suits have been filed and more are threatened against said corporation, and the officers and directors having resigned, as aforesaid, there is no one to properly represent and defend said corporation in said litigation, so that the plaintiffs therein will get judgments, whether they are entitled to or not.

That the property of said corporation will be wasted, stolen, or destroyed if there is no one to take charge of, care for, or preserve it.

191 That there are debts owing said corporation which it is important should be collected at once.

That in the interest of all parties concerned, both stockholders and creditors, the court should appoint at once a liquidator or receiver to take charge of the property and affairs of said corporation.

Wherefore petitioner prays that, the foregoing petition considered, this hon. court appoint a receiver or liquidating commissioner, with full power to liquidate the affairs of said corporation, on taking oath and otherwise qualifying according to law.

That an inventory be taken by F. H. Mortimer, notary public; that an att'y be appointed to represent absent creditors.

Further prays for all orders necessary in the premises, and for all general and equitable relief.

(Signed) By his attorney, HENRY L. GARLAND, JR.

A true copy.

[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

Order.

The court considering the foregoing petition, and particularly the intervention of the State of Louisiana by her attorney general and of the creditors mentioned:

It is ordered that John W. Watson be, and he is hereby, appointed receiver to the Louisiana Printing and Publishing Company, Limited, with full power to liquidate and wind up its affairs.

Let said John W. Watson take the proper legal oath and otherwise properly qualify.

Let an inventory be taken by F. H. Mortimer, notary public, of the assets and property of said Louisiana Printing and Publishing Company, Limited, in this parish, and let H. Messonnier and Pat. J. Kelly be appointed appraisers to value said property, and let

192 W. R. Horn, Esq., be appointed to represent absent creditors herein.

New Orleans, May 17th, 1893.

(Signed) T. C. W. ELLIS, *Judge.*

Citation.

Filed May 29th, 1893.

STATE OF LOUISIANA:

Civil Dist. Court for the Parish of Orleans, in the City of New Orleans.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

To the Louisiana Printing and Publishing Company, Limited, through James D. Hill, its president, New Orleans:

You are hereby summoned to comply with the demand contained in the petition and order thereon, of which copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service thereof.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred. D. King, Geo. H. Theard, judges of the said court, this 27th day — May, in the year of our Lord 1893.

(Signed) JAS. D. RANKIN, *D'y Clerk.*

Sheriff's Return on Citation.

Received Saturday, May 27th, 1893, and on the same day, month, and year I served a copy of the within citation and accompanying petition and order thereon on The Louisiana Printing and Publishing Company, Limited, defendant herein named, by personal
193 service on James D. Hill, its president.

Return- same day.

(Signed) A. E. AUBURTIN,
Deputy Sheriff.

Citation.

Filed May 29th, 1893.

STATE OF LOUISIANA:

Civil Dist. Court for the Parish of Orleans, in the City of New Orleans.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

Mr. John W. Watson, receiver of the Louisiana Printing and Publishing Company, Limited, New Orleans:

You are hereby summoned to comply with the demand contained in the petition and order thereon, of which a copy accompanies this

citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service thereof.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred. D. King, Geo. H. Theard, judges of the said court, this 27th May, in the year of our Lord 1893.

(Signed) JAMES D. RANKIN, *D'y Clerk.*

Sheriff's Return.

Received Saturday, May 27th, 1893, and on the same day, month, and year I served a copy of the within citation and accompanying petition and order personally on John W. Watson, receiver of the Louisiana Printing and Publishing Company, Limited, herein named.

Returned same day.

(Signed) CARSON MUDGE,
Deputy Sheriff.

194 *Notice of Appointment.*

Filed May 23rd, 1893.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

To W. K. Horn, Esq., attorney and counsellor at law, New Orleans.

SIR: Please to take notice that you have been appointed by this court attorney to represent the absent creditors herein.

New Orleans, May 18th, 1893.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return.

Received Thursday, May 18, 1893, and on the 18th day of May, 1893, I served a copy of the within notice of appointment personally on W. K. Horn, att'y-at-law.

Returned same day.

(Signed) JAMES DUIGNAN, *D'y Sh'ff.*

Intervention of the "Memphis Commercial" and of A. W. Hyatt Stationary and Manufacturing Co., Ltd.

Filed May 18th, 1893.

Civil District Court, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

195 The petition of intervention of the Memphis Commercial Publishing Co. — of the A. W. Hyatt Stationery and Manufacturing Co., Ltd.—

Respectfully represents that they are creditors of said Louisiana Printing and Publishing Company, Limited.

That your petitioners believe and aver the facts to be as stated in the original petition herein.

That it is necessary in order to protect the interest of all parties concerned, both stockholders and creditors, that a receiver or liquidator to said corporation should be at once appointed by this court.

Wherefore petitioners join in the prayer of the original plaintiff, and urge upon the court the necessity of taking action at once.

(Signed) WM. K. HORN,
Att'y for Memphis Commercial Claim, $900.00.
A. W. HYATT STA. MFG. CO., LTD., $71.45.

Order.

Let this petition of intervention be filed according to law.
New Orleans, May 18th, 1893.
(Signed) T. C. W. ELLIS, *Judge.*

Intervention of the State of Louisiana.

Filed May 18th, 1893.

Civil District Court, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

196 The petition of intervention of the State of Louisiana herein represented by her attorney general, Milton J. Cunningham.

That it appears from the averments of the original petition herein that the said Louisiana Printing and Publishing Company, Limited,

is insolvent and has abandoned its corporate franchises and privileges, and is unable or refuses any longer to perform its corporate functions.

That the charter of said corporation should therefore be annulled and the said corporation dissolved and its property and affairs wound up, and its assets distributed according to law by a liquidator or receiver appointed by this honl. court.

Wherefore petitioner prays as in the original petition, and for all necessary orders and general relief.

(Signed) M. J. CUNNINGHAM,
Attorney General.

Order.

Let this petition of intervention be filed according to law.
New Orleans, May 18th, 1893.
(Signed) T. C. W. ELLIS, *Judge.*

Petition.

Filed May 27th, 1893.

Civil District Court, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 39100.

To the hon. civil district court for the parish of Orleans:

197 *In re* FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

The petition of Thomas B. Lyons, residing in Virginia, respectfully shows that the Louisiana Printing and Publishing Company, Limited, a corporation of which James D. Hill is president, domiciled and lately doing business in this city, is indebted to your petitioner in the sum of three hundred dollars, besides interest and attorneys' fees, for this, that about 29th September, 1892, petitioner, through his agent, B. R. Forman, leased to said company, acting through C. Harrison Parker, its secretary, thereto duly authorized, the three-story brick building No. 41 Natchez street at fifty dollars per month, with a stipulation in its lease to pay 8 % interest after maturity and 10 % attorneys' fees, the lease to commence 1st October, 1892, and end 30 Sept., 1893.

The rent due 1st May remains unpaid, although demand has been made, and petitioner holds and owns the six rents notes made by said company, dated 29 Sept., 1892, and each for fifty dollars, payable to order of B. R. Forman and by him endorsed to petitioner, due 1st May, 1st June, 1st July, 1st Aug., 1st Sept., and 1st Oct., 1893. The said lease and notes are annexed and made a part of this peti-

tion; and petitioner has by law a lien and privilege in the nature of a pledge on the movables contained in the leased premises or removed therefrom within fifteen days, and petitioner fears, and has just cause to fear, that said movable property will be removed and he will thereby be deprived of his lien; that on the allegation of the insolvency of said corporation and the other allegations contained in the petition of —— Pope (which petition- neither affirms or denies) this court has appointed John W. Watson as receiver of said corporation, who, as the officer of this court, has taken possession
198 of all its property, and particularly of the movable property, in the leased premises, No. 41 Natchez street, on which petitioner has a lien and privilege.

Wherefore petitioner prays that said John W. Watson, receiver, his agents and servants, be prohibited from removing or permitting to be removed any of the movable property from the premises No. 41 Natchez — until petitioner's rent, $300, interest, attorneys' fees, and costs be paid, and that he, the receiver, and the said company, through James D. Hill, its president, be cited and petitioner have and recover judgment against said Louisiana Printing and Publishing Company, Limited, and against the receiver thereof for the sum of three hundred dollars, with 8 % interest on $50 from 1st May, 1893, and 8 % interest on $50 from 1st June, 1893, and 8 % interest on $50 from 1st July, 1893, and 8 % interest on $50 from 1st Aug., 1893, and 8 % interest on $50 from 1st Sept., 1893, and 8 % interest on $50 from 1st Oct, 1893, until paid, with right to execution on the first of each month for each and all month-, with interest and ten per cent. attorneys' fees, and petitioner's lien and privilege on the movable property contained in or removed from the leased premises be recognized and enforced and the receiver be ordered to sell the said property and to pay your petitioner by preference out of the proceeds the aforesaid sum of $300 and 8 % interest and 10% attorneys' fees and costs, and for general relief.

(Signed) B. R. FORMAN, *Att'y.*

Order.

Let this petition be filed and let John W. Watson, receiver, his servants and agents, be prohibited from moving from the premises No. 41 Natchez street or permitting to be removed therefrom any movable property whatever without first paying to the petitioner, Thos. B. Lyons, his rent of $300 and interest and attorneys'
199 fees.

New Orleans, May 27th, 1893.

(Signed) FRED. D. KING,
Judge, Acting for Hon. T. C. W. Ellis, Judge Division "A," Absent from the Parish.

A true copy.
[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

Oath of Receiver.

Filed May 18th, 1893.

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

Before me, Jas. D. Rankin, deputy clerk of the civil district court for the parish of Orleans, personally came and appeared John W. Watson, who solemnly swears that he will well and faithfully perform all and singular the duties of receiver of the Louisiana Printing and Publishing Company, Limited, so help him God.

(Signed) JNO. W. WATSON.

Sworn to and subscribed before me.
New Orleans, May 18, 1893.
(Signed) JAS. D. RANKIN, *D'y Cl'k.*

200 A true copy.
[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

Endorsed: Signed as being referred to by me in bill of exceptions No. 2. (Signed) Edward C. Billings, judge.

Charter of the Louisiana Printing and Publishing Company, Limited.

Offered by plaintiff and filed June 5, 1893.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth,—

Before me, George Covington Preot, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared—

The several persons whose names are hereunto subscribed, who declared that, availing themselves of the provisions of the laws of this State relative to the formation of corporations, they do by these

presents covenant, agree, and bind themselves, as well as such other persons as may hereafter become associated with them, to form and constitute a corporation and body politic in law for the objects and purposes and under the agreements and stipulations following, to wit:

201 Article first.

The name and title of this corporation shall be the "Louisiana Printing and Publishing Company, Limited," and under its said corporate name it shall have full power and authority to have and enjoy corporate existence for the term of ninety-nine years from and after the date hereof, and during its corporate existence it shall also have power to contract, sue and be sued; to make and use a corporate seal, and the same to break or alter at pleasure; to hold, receive, lease, let, purchase, sell, and convey, as well as mortgage and hypothecate, property, real, personal, and mixed; to borrow and lend money, and to give and receive securities therefore; to name and appoint such managers, directors, officers, overseers, and agents as the interests and convenience of said corporation may require; to make and establish such by-laws, rules, and regulations for the management and regulation of the affairs of said corporation as may be necessary and proper, and the same to alter and amend at pleasure.

Article second.

The domicile of said corporation shall be in the city of New Orleans, State of Louisiana, and all citations and other legal process shall be served upon the president of said corporation, or, in case of his absence, upon the secretary thereof.

Article third.

The objects and purposes for which this corporation is established and the nature of the business to be carried on by it are hereby declared and specified to be: to print and publish in the city of New Orleans a daily or a weekly paper, or both, to carry on a general book and job printing and newspaper business, with all things connected therewith, and by the sale of such newspapers, books, periodicals, and other printed matter published by said company
202 to disseminate news and all other matters of general information, and for the purposes aforesaid to purchase or establish a newspaper.

Article fourth.

The capital stock of this corporation is hereby fixed at one hundred and fifty thousand dollars ($150,000.00), divided into and represented by twelve thousand shares of twelve dollars and fifty cents ($12.50) each. Said stock shall be paid for in cash at the time of subscription; but the board of directors shall have the power to issue full-paid stock at not less than par in payment of a newspaper outfit or materials or other property purchased by said corporation, or for work done for said company or for services rendered. The

corporation shall be authorized to begin business as soon as three thousand dollars of the capital stock shall have been subscribed.

After stock to the amount of ten thousand dollars shall have been subscribed for and taken, no further stock shall be placed upon the market or disposed of in any way, except in case some financial necessity of the company demand it, the existence of such necessity to be determined by a majority vote of the entire board of directors.

Article fifth.

Transfers of stock shall be valid only when made on the books of the company, subject to such restrictions and formalities as the board of directors may prescribe, and subject also to the following restriction, to wit: No stockholder shall sell or otherwise transfer his stock until he shall have first given to the president of the company the option of purchasing said stock for the company at its face value. The stockholder desiring to call upon the president
203 to exercise said option shall give him notice in writing to do so, and said option shall continue for a period of ten days, running from the date of the service of said notice upon the president. No transfer of stock shall be made until the expiration of said ten days, except to the company, and this provision of the charter shall be embodied in every certificate of stock or printed across the face thereof.

Article sixth.

All the corporate powers of said company shall be vested in and exercised by a board of directors, composed of five stockholders of said corporation, to be elected annually on the third Monday in April; the first election to be held in 1893. All such elections shall be — ballot, and shall be held at the office of the company, under the superintendence of three commissioners to be appointed by the board of directors. Ten days' prior notice of such elections shall be given by publication in one of the daily newspapers of New Orleans, and the directors then elected shall serve and continue in office until their successors shall have been elected.

Each stockholder shall be entitled to cast, in person or by proxy, one vote for every share of stock held by him, and the majority of the votes cast at such election shall elect the directors for the ensuing year.

If at any time there should be a failure to elect directors as above provided, such failure shall not dissolve the corporation, but the then existing board of directors shall continue to hold office, and as soon as may be thereafter another election shall be held, whereof ten days' prior notice shall be given by publication in one of the daily newspapers of New Orleans. Any vacancy occurring in the board of directors from any cause whatever shall be filled by the remaining directors. Three directors shall constitute a
204 quorum for the transaction of business.

Article seventh.

The following-named persons shall constitute the first board of directors, to wit: James D. Hill, George K. Bradford, William W. Vance, James D. Coleman, and C. Harrison Parker, and they shall hold office until the third Monday in April, 1893, and until their successors are duly elected.

The board of directors at its first meeting shall elect from its number a president and a vice-president and appoint a secretary and a treasurer or one person to be secretary and treasurer, who need not be a member of the board, and also, if it deems proper, it shall have power to appoint a general manager, who may or may not be a member of the board. The salaries of all employees shall be fixed by the board of directors; and, should the board of directors so determine, it shall have power to give the general manager full and absolute control, without any interference whatever, of the conduct of the newspaper and of its business; to vest in such manager the entire direction of the operations and policy of the newspaper, the selection of its employees, and the general conduct of its business. The board of directors shall have the authority to appoint and contract with the general manager for a period not exceeding three years, and to fix his compensation, in money or stock, as they may deem best.

Article eight.

Whenever this corporation shall be dissolved, either by limitation or otherwise, its affairs shall be liquidated by three commissioners, to be appointed from among the stockholders at a general meeting to be convened for that purpose, after thirty days' prior notice by publication in one of the daily newspapers of New Orleans, and with the assent of a majority in amount of the capital stock
205 of said corporation. Said commissioners shall continue in office until the affairs of the company shall have been fully liquidated, and in case of the death of one or more of said commissioners the survivors or survivor shall continue to serve.

Article ninth.

This act of incorporation may be changed, altered, or amended or said corporation may be dissolved with the assent of a majority in amount of the capital stock at a general meeting of the stockholders called for that purpose, after thirty days' prior notice of such meeting by publication in two of the daily newspapers of New Orleans.

The capital stock of said corporation may be increased as occasion may require, by complying with the requirements of an act of the legislature of this State entitled "An act to provide the manner in which corporations may increase their capital stock, and to carry into effect article 239 of the constitution," approved on June 23rd, 1892.

Article tenth.

No stockholder shall ever be held liable or responsible for the contracts or faults of said corporation in any further sum than the unpaid balance that may be due the company on shares of stock owned by him, nor shall any mere informality in organization have the effect of rendering this charter null or of exposing any stockholder to any liability beyond the amount of such unpaid balance due upon his stock.

Thus done and passed in my office, in the city of New Orleans on the day and in the month and year first above written, in the presence of Messrs. James Guyol and Charles Foley, both of this city, competent witnesses, who have signed these presents
206 with said appearers and me, notary, after due reading.

(Original signed) WM. W. VANCE.
JAS. D. HILL.
C. HARRISON PARKER.
JAMES DAVID COLEMAN.
GEO. K. BRADFORD,
Per pro C. HARRISON PARKER.
GIRAULT FARRAR.
CHARLES PARLANGE.
C. FOLEY.
JAS. GUYOL.
GEO. C. PREOT, *Not. Pub.*

I, the undersigned, recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the foregoing act of incorporation of the Louisiana Printing and Publishing Company, Limited, was this day duly recorded in my office in Book 395, folio 518.

New Orleans, April 26th, 1890.

(Signed) GEO. GUINAULT, *R. M.*

I hereby certify the above and foregoing to be a true and correct copy of the original act of incorporation on file and of record in the current register of my notarial deeds.

In faith whereof I have hereunto set my hand and
[SEAL.] seal, at New Orleans, Louisiana, this third of June, A. D. 1893.

(Signed) GEO. C. PREOT, *Not. Pub.*

Oath of John W. Watson, as Receiver.

Offered by Defendant and Filed June 5, 1893.

207 Civil District Court for the Parish of Orleans, Div. "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

Oath of Receiver.

Filed May 18th, 1893.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

Before me, Jas. D. Rankin, deputy clerk of the civil district court for the parish of Orleans, personally came and appeared John W. Watson, who solemnly swears that he will well and faithfully perform all and singular the duties of receiver of the Louisiana Printing and Publishing Company, Limited, so help him God.

(Signed) JNO. W. WATSON.

Sworn to and subscribed before me.
New Orleans, May 18th, 1893.
(Signed) JAS. D. RANKIN, *D'y Cl'k.*

A true copy.
[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

Opinion on Motion to Quash Writs.

Filed June 6, 1893.

Circuit Court of the United States, Eastern District of Louisiana.

THE REMINGTON PAPER CO.
vs.
LA. PRINTING AND PUBLISHING COMPANY.

BILLINGS, *Judge:*

208 In this case writs of attachment and sequestration have been issued against the property of the defendants.

John W. Watson has taken a rule in this court to have these writs set aside, averring that after the institution of a proper suit in the civil district court for the parish of Orleans, he was by that court

appointed receiver of the property and effects of the defendants, and as such receiver was in possession of certain property of the defendants through its agents when the marshall made the seizure in his hands.

It is urged by the plaintiff in this suit that the proceeding by the receiver should have been by intervention; that he cannot proceed by rule. I have no doubt that as a general thing the intervention must be resorted to by a person other than an original party to the suit, but I cannot see that in this case any harm can come by allowing the matter to be heard by rule. In either case there is a liability for costs, the result would have been the same, and in the rule greater expedition was allowable. The receiver is as fully here as if he had intervened. I think, therefore, I ought to allow him to proceed by rule.

The argument in the case has taken a wide range, but in my view of the case Watson, by the duly authenticated order of the civil district court, is shown to have been appointed receiver upon a petition of a creditor of the defendants and in the intervention of the attorney general; which original and intervening petitions averred that all the officers of the defendant corporation had resigned, and that it was in fact a vacant corporation. I do not think this court can deal at all with the alleged irregularity in the appointment of the receiver, such as the alleged want of an execution, etc., preceding the appointment. It appearing to this court
209 that a court of concurrent jurisdiction has appointed a receiver who was in actual possession, this court has no right to attempt to dispossess him. All the matter as to irregularity of the appointment must be dealt with by the court that appointed. I understand the doctrine of the comity of courts to be this—that where a court has jurisdiction of a cause and property and through its proper officer is in possession, it is the duty of all other courts to refrain altogether from the attempt to take that property into possession except by permission of the court in possession. It is not a question of the validity of process, but a question of public order, and the rule of comity is based upon the duty of courts to abstain from anything that might lead to violence. There having been a receiver appointed by a court of competent jurisdiction and he being in possession of the property attempted to be seized by the marshall, and which was in fact seized, I think the duty of this court is to restore the property practically to the situation in which it was when the property was interfered with by the marshall. The order of this court therefore is that — marshall restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receive- authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs.

Order Setting Aside Writs and Restoring Property to Receiver, etc.

Extract from the Minutes, April Term, 1893.

NEW ORLEANS, TUESDAY, *June* 6, 1893.

Court met pursuant to adjournment.
210 Present: Hon. Edward C. Billings, district judge.

THE REMINGTON PAPER CO.
vs.
LA. PRINTING AND PUBLISHING CO. } No. 12197.

This cause having been heard and submitted upon a rule taken by John W. Watson, appointed a receiver of the defendants by the civil district court for the parish of Orleans, to set aside the writs of attachment and sequestration issued in this cause, and upon the exception thereto filed by the plaintiff, and the same having been considered by the court, it is now ordered, for the reasons assigned in the written opinion on file, that the marshal*l* restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs.

Certificate from State Court Shown Marshall this Day, June 10, 1893, *in Presence of M. & M.*

Filed June 10, 1893.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

I hereby certify that a petition has been filed in the above cause on the 9th day of June, 1893, on behalf of the Remington Paper Company of New York, praying, among other things, for the annulment of the order appointing John W. Watson receiver of
211 the Louisiana Printing and Publishing Company, Limited, and applying for authority from the civil district court to hold the property under the writs of sequestration and attachment issued from U. S. circuit court.

Clerk's office, civil district court for the parish of Orleans.
(Stamp:) New Orleans, June 9th, 1893.
[SEAL.] (Signed) JAS. D. RANKIN,
Deputy Clerk.

Bill of Exception No. 1.

Filed June 12, 1893.

Circuit Court of United States, Eastern District of La., 5th Circuit.

REMINGTON PAPER COMPANY
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, LIMITED. } 12197.

Be it remembered that on the 30th day of May, A. D. 1893, John W. Watson, styling himself receiver of the Louisiana Printing and Publishing Company, Limited, filed in this court and in this case a paper called a motion to quash the attachment and sequestration sued out in this case, and said rule or motion concluded with an order which the mover in the rule desired the court to adopt, and thereupon the judge of this court made the following order on said motion, viz:

"Let this rule be filed and let the Remington Paper Company, through their attorneys, Merrick and Merrick, show cause on Thursday, June 1st, at 11 a. m., why the above motion should not be granted.

(Signed) EDWARD C. BILLINGS, *Judge.*"

And thereupon such proceedings were had that the said rule on the behalf of the said mover was continued until Saturday, June 3rd, 1893, when the plaintiff in this case filed the written ex-
212 ception and objection to the regularity of the proceeding by rule and denying the right of the said mover to appear in this court and in this cause in this informal, irregular, and summary manner, and that he, said mover, was without right to demand a judgment in this court in this case without coming into court by regular process and proceedings and in the mode allowed by law, wherein the plaintiff will be entitled to a trial of questions of law and fact in the mode and manner guaranteed by the constitution and prescribed by law, and praying for a dismissal of said rule, and signed by said Merrick and Merrick, attorneys; all of which will more fully appear by the written objection and exception signed by me for identification and made a part of this bill.

And the plaintiff's counsel then and there prayed the court to decide the said exception to said rule before proceeding further or hearing any testimony on the said rule taken by said Watson.

But the court concluded to hear testimony on the allegations of said rule and reserved the plaintiff's said preceding objections *was* and exceptions until after hearing the proofs and evidence; and the court, having heard argument on the 5th of June, instant, took the case under advisement, and on the sixth day of June, 1893, among other things, overruled the said objection *to* the plaintiff to the said rule and decided the said rule in favor of the said John W. Watson, mover in the rule, requiring plaintiffs to contest the validity of their

attachment in the State court in manner and form as entered by the decree in this case, on the ground that it appeared that the receiver appointed by a court of concurrent jurisdiction had been dispossessed by the marshal*l*, the court, without passing upon the claim of a right to a jury trial, holding that the comity of courts require that the trial must be in the State court which had first acquired jurisdiction over the *res;* and thereupon the plaintiff, by counsel, among other things, excepted to the opinion and
213 decree of the court in this case in refusing to sustain said objection and exception, and a delay being given in which to prepare this bill; the same is now here presented and allowed and ordered to be filed. The said rule of the said John W. Watson is made a part of this bill to show fully what he demanded, and I have identified the same by my signature. In the same manner I have identified the said objection and exception to said rule, and the same is made a part of this bill of exception, which is allowed and signed accordingly.

(Sugned) EDWARD C. BILLINGS, *Judge.*

Motion to quash attachment and sequestration, referred to in and made part of bill of exceptions No. 1, copied at page 14 of this transcript.

Objection and exception to rule to quash, referred to in and made part of bill of exceptions No. 1, copied at page 16 of this transcript.

Bill of Exceptions No. 2.

Filed June 12, 1893.

REMINGTON PAPER COMPANY
vs.
THE LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 12197.

On the rule of John W. Watson, styling himself receiver.

Be it remembered that on trial of the rule in this case by the court, after it had determined to hear and consider the evidence of the mover, as has been set forth in another bill of exception and along with and against the objection of the plaintiff, the said John W. Watson, on the third day of June, instant, offered in evidence,
214 to establish his right to take from the marshal*l* the property seized under the writs of attachment and sequestration, 1st, so much of the transcript of the record of the case of Frank H. Pope *vs.* The Louisiana Printing and Publishing Company, Limited, No. 39100, in the civil district court, as embraces the order under which said receiver was acting as such receiver, hereto annexed and made part hereof, and the petition in said case; 2nd, and subsequently said counsel offered in evidence the petition of Frank H. Pope, the intervention of the attorney general of the State of Louisiana, the intervention of A. W. Hyatt Manufacturing Company and the Memphis Commercial Publishing Company, as contained in the said tran-

script made a part of this bill of exception, and the same is herewith identified by my signature; and also offered his, said Watson's, oath, also herewith identified by my signature and made a part hereof; and said Watson offered two witnesses, Fisher and Hereford, who swore that they were in possession of the Louisiana Printing and Publishing Company Limited's office, known as the office of the New Delta, as the agents and employees of said Watson, who had been appointed receiver by the civil district court of the parish of Orleans, and were making inventories of the effects of the New Delta office belonging to defendant preparatory to said receiver giving his official bond, when they were interrupted by the United States marshal under the writs of attachment and sequestration in this cause, who displaced, against their protest, said witnesses so holding for said receiver and took full possession of the effects of said defendants, as shown by said writs, and excluded said Watson's agents and appointed his own custodian. The said Watson offered in evidence no bond in any sum as a receiver to secure the faithful discharge of his duties as such receiver, or for indemnity of the creditors, nor any letters of receivership or other evidence of a confirmation
215 of his receivership than hereinbefore stated; and the plaintiff, after the admission of said evidence by said mover, John W. Watson, and in order to show that said Watson was not authorized to take into his custody and hold any property of said Louisiana Printing and Publishing Company, Limited, against the lawful pursuits of its creditors, and to show that he could not lawfully object to the seizure of the said marshal, offered the whole of said record shown by said transcript in said cause 39100; which said transcript is annexed and made a part of this bill of exception and identified herewith by my signature, and in the same manner the affidavit is identified herewith, together with plaintiff's answer to said rule in the event the exception to said rule should be overruled, as shown in the other bill of exception signed by me, and said conditional answer to said rule of said Watson is also identified by my signature; and the foregoing was the evidence of the parties to the rule on both sides; and the court, having heard evidence and argument on said rule, on Tuesday, the 6th day of June, 1893, ordered *that* the said marshal to restore the property seized in this cause under the writ of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson, or from the appellate court, to hold same under said writs for the reason set forth in bill of exception No. 1; and the plaintiff then and there, in open court, by counsel, excepted to the said ruling of the court, and time being granted in which to prepare a bill of exception to said ruling of the court, the same is now done and allowed and signed and ordered to be filed.

(Signed) EDWARD C. BILLINGS, *Judge.*

Transcript of Proceedings in the Civil District Court, Parish of Orleans, In re Frank H. Pope vs. Louisiana Printing and Publishing Company, Limited, Marked "X."

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Referred to in and made part of bill of exceptions No. 2, copied at page 19 of this transcript.

Oath of John W. Watson as Receiver.

Referred to in and made part of bill of exceptions No. 2, copied at page 37 of this transcript.

Default Against Defendant.

Extract from the Minutes, April Term, 1893.

NEW ORLEANS, TUESDAY, *June* 13, 1893.

Court met pursuant to adjournment.
Present: Hon. — C. Billings, district judge.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 12197.

On motion of Merrick and Merrick, attorneys for the plaintiff, and on suggesting to the court that the defendant, The Louisiana Printing and Publishing Co., has failed to answer the petition, although duly cited—

It is ordered that judgment by default be entered against the said defendant herein.

Answer and Reconventional Demand.

Filed June 15, 1893.

U. S. Circuit Court.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 12197.

217 Now comes defendant, through John W. Watson, receiver, duly appointed and qualified, and, for answer to the petition of the plaintiff herein, denies all and singular the allegations thereof, and, assuming the position of plaintiff in reconvention, asks for judgment for $300 for attorneys' fees in vacating and setting aside the writs of attachment and sequestration herein sued out.

Prays that the suit of plaintiff herein be dismissed at its costs.

By att'y for receiver:
(Signed) H. L. GARLAND, JR.

Motion to Dissolve.

Filed June 15, 1893.

Circuit Court of U. S.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

Now into court comes John W. Watson, duly appointed and qualified receiver to defendant herein, and moves to set aside and dissolve the writs of attachment and sequestration herein sued out, on the ground that all the allegations of the petition and affidavit herein are false and unfounded, and said writs should be dissolved and vacated as having wrongfully issued; reserving all rights of defendant to claim damages for their illegal issuances, prays that this motion be tried by the court.

By att'y for receiver:
(Signed) H. L. GARLAND, JR.

Default Set Aside.

Extract from the Minutes.

FRIDAY, *June* 16, 1893.

218 REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of H. L. Garland, attorney, and on suggesting that an answer has been filed herein—

It is ordered that the answer be treated as filed of this date, and that the judgment by default entered June 13, 1893, be set aside.

Order Fixing Motion to Set Aside Writs.

Extract from the Minutes.

FRIDAY, *June* 16, 1894.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion — H. L. Garland, attorney—

It is ordered that the motion to set aside the writs of attachment and sequestration be fixed for trial on Wednesday, June 21, 1893, at 11 a. m.

Motion to Have Access to Books.

Entered and filed June 20, 1893.

U. S. Circuit Court, Eastern District of La., Fifth Circuit.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of John W. Watson, receiver to the Louisiana Printing and Pulishing Co., Ltd., and on suggesting to the court that the marshall of this court has taken into his physical pos-
219 session the books of defendant company which should not be attached, and not being susceptible of sale are not proper objects to be attached;

And on further suggesting to the court that the said marshall refuses even to permit mover or his agents to have access to said books or to make any use of them whatever;

And on further suggesting to the court that mover does not desire to remove said books, but merely to have access to the same, and that mover is not only receiver to said corporation, but is personally a stockholder therein, and as such has a right to have access to said books guaranteed to him by the constitution of this State—

It is ordered that the Remington Paper Co., through Merrick and Merrick, attorneys, show cause on Wednesday, June 21, 1893, at 11 a. m., why said marshall should not, 1°, surrender said books absolutely to mover as the receiver of the Louisiana Printing and Publishing Co.

2°. Permit mover or any of his agents to have access to said books at any and all reasonable hours.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 20, '93, and on the same day I served copy hereof on the Remington Paper Co. by handing the same to Hon. E. T. Merrick, Sr. (att'y of record for the Remington Paper Co.), in person in New Orleans, La.

(Signed) J. B. DONNALLY,
U. S. Marshall,
By J. E. BOEHLER,
D'y U. S. Marshall.

Motion of Plaintiff to Reinstate Judgment by Default and to Strike Answer from the Files.

Filed June 21, 1893.

220 REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 12197.

On motion of Merrick and Merrick, of counsel for the plaintiff, and on suggesting to this court that this suit has been brought against the Louisiana Printing and Publishing Company, an existing corporation composed of many stockholders, and that such proceedings have been had in this cause that a judgment by default has been regularly taken according to law and is the property of petitioner, of which it cannot be deprived except in due form of law; that John W. Watson, who has no lawful authority to stand in judgment for said defendant corporation, styling himself a receiver to the same, has illegally applied to this court on his said representation on the 15th instant, and caused this court to set aside improvidently the lawful judgment by default taken by petitioner against the defendant corporation and to file a pretended but unauthorized answer, he being no party to the suit—

It is therefore ordered that said judgment by default be reinstated, and that said answer of said Watson, third person, be stricken from the record.

Hearing and Submission of Motion to Set Aside Order Setting Aside Default.

Extract from the Minutes.

WEDNESDAY, *June* 21, 1894.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

221 This cause came on be heard upon the motion of plaintiff to set aside the order setting the default herein aside and to reinstate the default; whereupon the matter was submitted and taken under consideration.

Exception of Plaintiff to Motion to Set Aside Writs of Attachment and Sequestration.

Filed June 21, 1893.

THE REMINGTON PAPER COMPANY
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 12197.

To the second motion of said John W. Watson, calling himself receiver in this case, to set aside the writs of sequestration and attachment in this case plaintiff except- on the following grounds:

1st. Plaintiff cannot be compelled in the short delay allowed by this rule to be called upon to contest the important issues involved in said motion, nor can said pretended John W. Watson, who is no party to this suit and has never been authorized to stand in judgment for plaintiff's debtor and whose pretensions are denied, intrude himself into this controversy in this irregular manner and harass the plaintiff by motions without delay when the law has pointed out for said Watson a regular process in which plaintiff can make its proper defence and be entitled to its legal delay to procure testimony and trial by the court or jury as the issues may require.

2. Because petitioner has given a full bond of indemnity, according to law, for the seizure of the property, and the custody of the same is making daily cost to petitioners, and the irregular mode of proceeding attempted by said Watson is intended to obtain an advantage over petitioner by getting possession of the property
222 of which he is not the owner and on which he has no privilege without giving the bond which a regular proceeding would require him to give, as is seen by reference to act No. 51, page 92, of the Acts of the Legislature of A. D. 1876.

3. This court has referred the parties to the State courts for the determination of said Watson's rights, and the matter is there pending.

Wherefore petitioner prays that said rule of said Watson be dismissed at his costs.

(Signed) By MERRICK AND MERRICK,
Att'ys for Petitioner.

Submission of Motion to Set Aside Writs.

Extract from the Minutes.

WEDNESDAY, *June* 21, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

The motion of defendant to set aside the writs of attachment and sequestration issued in this cause was taken under consideration by the court.

Exception to Rule of Receiver for Access to Books.

Filed June 21, 1893.

REMINGTON PAPER COMPANY
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 12197.

223 To the rule of said John W. Watson, pretending to be receiver of said company defendant, wherein said Watson demands the books seized in this case, the plaintiffs—

Excepts to the mode of proceeding in this case, said Watson not being individually or otherwise a lawful party to this suit, and said rule or motion having been served yesterday after the closing of all offices on plaintiff's attorneys.

2. Plaintiff, in the event it is compelled to answer said irregular proceeding, says that said Watson cannot take said books out of the custody of the law, wherein they have been placed on the bond of the plaintiff, without giving bond himself, and he cannot subject plaintiff to responsibility for his, said Watson's, acts or the acts of his agents nor as such stranger and third person put the plaintiff to the cost — presenting said books to the inspection of said Watson's agents, when said Watson himself has not enough confidence in his case to bond the property himself and diminish the costs.

Wherefore plaintiff prays that said irregular proceeding be dismissed at said Watson's cost.

(Signed) By MERRICK AND MERRICK,
For Plaintiff.

Motion to Permit Receiver Access to Books Continued.

Extract from the Minutes.

WEDNESDAY, *June* 21, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

The motion to permit J. W. Watson, receiver of defendant, to have access to the books of said defendant, was continued
224 until tomorrow, at 11 a. m.

Submission of Rule for Access to Books.

Extract from the Minutes.

THURSDAY, *June* 22, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

This cause came on to be heard upon the rule of the receiver of defendant to obtain access to the books of said defendant, and was argued and submitted.

Order: Receiver Granted Permission to Obtain Access to Books upon Filing Intervention; in Default of Such Filing, Rule for Access to be Denied.

Extract from the Minutes.

FRIDAY, *June* 23, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 12197.

This case having been argued and submitted upon a rule taken by Jno. W. Watson, receiver appointed by the civil district court, to have access to the books of the defendant, now in custody of the U. S. marshall under the writs of sequestration and attachment herein, and having been considered by the court—

It is ordered that upon the filing of an intervention in this cause by the receiver, permission be granted him to have access to the said books, but that in case he does not file such intervention that
225 the rule be refused.

Default.

Extract from the Minutes.

TUESDAY, *November* 7, 1893.

REMINGTON PAPER CO.
vs.
THE LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of Merrick and Merrick, attorneys for the plaintiff, and on suggestion to the court that the defendant, The Louisiana Printing and Publishing Company, Limited, has failed to answer the petition herein, although duly cited—

It is ordered that judgment by default be entered against the said Louisiana Printing and Publishing Company, defendant herein.

Motion to Set Aside Default.

Filed Nov. 10th, 1893.

United States Circuit Court, Eastern District.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 12197.

On motion of John W. Watson, receiver duly appointed to the defendant company, and on suggestion to the court that he has been fully authorized by the court which appointed him to appear herein and represent the defendant company;

And on further suggesting that, so appearing, this mover filed an

answer with reconventional demand to the petition of the plaintiff herein and therein moved to set aside a default which had been previously and erroneously allowed against defendant;

226 And on further suggesting that notwithstanding these facts the plaintiff herein entered a default on November 7, 1893, against defendant company, though this court had already fully recognized the right and duty of the mover to appear herein and defend this action:

It is ordered that the default herein, taken on Nov. 7, 1893, be set aside, and that notice of this motion be given to plaintiff through Merrick and Merrick, its local attorneys, and that this motion be fixed for hearing on Thursday, Nov. 16, 1893, at 11 a. m.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Nov. 13, '93, and on the same day I served a true copy of the within motion on Merrick and Merrick, att'y- of record, by handing the same to E. T. Merrick, Jr., in person.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By J. E. BOEHLER,
D'y U. S. Marshal.

Order Fixing Motion to Set Aside Default.

Extract from the Minutes.

FRIDAY, *November* 10, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of H. L. Garland, att'y for John W. Watson, receiver—

It is ordered that the motion of said receiver filed this day to set aside default be set down for hearing on Thursday, the 16th

227 November, 1893, at 11 a. m.

Order: Rule to Set Aside Default Discharged and Defendant to File an Answer to Petition.

Extract from the Minutes.

THURSDAY, *November* 16, 1893.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

This cause came on this day to be heard upon the rule taken by John W. Watson, receiver, Nov. 10, 1893, to set aside the default entered against the defendant Nov. 7, 1893—

Merrick and Merrick appearing for plaintiff in suit; H. L. Garland, Jr. for mover, and was argued.

Whereupon, on consideration thereof, it is ordered that the rule be discharged.

It is further ordered that the default will be set aside upon the attorney for The Louisiana Printing and Publishing Co., defendant, filing an answer to the petition herein.

Answer.

Filed Nov. 16, 1893.

U. S. Circuit Court.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 12197.

Now into court comes defendant Co., by its undersigned counsel, and for answer to petition denies all and singular the allegations thereof, and prays in reconvention for the sum of $300 damages, being for attorneys' fees in dissolving writs of attachment
228 and sequestration herein sued out; prays that default herein taken be set aside.

(Signed) By its attorney, H. L. GARLAND, JR.

Order Fixing Motion to Dissolve Attachment.

Extract from the Minutes, April Term, 1894.

NEW ORLEANS, THURSDAY, *July* 7, 1894.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of H. L. Garland, Jr., of counsel for the defendant—

It is ordered that the motion to dissolve the attachment herein be fixed for hearing on Wednesday, June 13, '94, at 11 a. m.

Order: Continuance.

Extract from the Minutes.

WEDNESDAY, *June* 13, 1894.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of counsel for the respective parties—

It is ordered that the motion to dissolve the attachment herein be continued to Thursday, November 8, 1894.

229 *Order: Motion to Dissolve Continued Indefinitely.*

Extract from the Minutes, November Term, 1894.

NEW ORLEANS, THURSDAY, *November 8th*, 1894.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 12197.

On motion of Merrick and Merrick, attorneys for the plaintiff, and on suggesting the absence of counsel for defendant—
It is ordered that the motion to dissolve the attachment be continued indefinitely.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 61 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of The Remington Paper Company *vs.* The Louisiana Printing and Publishing Company, Limited, No. 12197 of the docket of the said court.
Witness my hand and the seal of said court, at the city of New Orleans, this 22nd day of November, A. D. 1894.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

230 I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.
Given under my hand, at the city of New Orleans, in said district, this 22nd day of November, A. D. 1894.

(Signed) CHARLES PARLANGE, *Judge.*

Petition of Frank H. Pope for a Receiver.

Filed May 17th, 1893.

Civil District Court, Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 39100.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of Frank H. Pope, a resident of the city of New Orleans, with respect represents—

That the Louisiana Printing and Publishing Company, Limited, a corporation organized under the laws of the State of Louisiana, and particularly under the act of 1888, providing for the organization of corporations of limited liability, is justly and truly indebted unto your petitioner in the full sum of six hundred dollars.

231 That said Louisiana Printing and Publishing Company, Limited, is domiciled in the city of New Orleans, within the jurisdiction of this honorable court.

That said corporation is utterly insolvent.

That it has property and assets within the jurisdiction of this honorable court.

That said property and assets and the fund hereinafter prepared to be distributed exceed two thousand dollars in value.

That the directors and officers of said corporation, being unable to agree in the management and administration of said corporation, have resigned their positions and abandoned their trust, and in consequence there is no one now to take charge of and represent said corporation and to protect its interests.

That several suits have been filed and more are threatened against said corporation, and the officers and directors having resigned as aforesaid, there is no one to properly represent and defend said corporation in said litigation, so that the plaintiffs therein will get judgments, whether they are entitled to — or not.

That the property of said corporation will be wasted, stolen, or destroyed if there is no one to take charge of, care for, or preserve it.

That there are debts owing said corporation which it is important should be collected at once.

That in the interest of all parties concerned, both stockholders and creditors, the court should appoint at once a liquidator or receiver to take charge of the property and affairs of said corporation.

Wherefore petitioner prays that, the foregoing petition considered, this hon. court appoint a receiver or liquidating commissioner with full power to liquidate the affairs of said corporation on taking oath and otherwise qualifying according to law.

232 That an inventory be taken by F. H. Mortimer, notary public; that an attorney be appointed to represent absent creditors.

Further prays for all orders necessary in the premises and for all general and equitable relief.

By his attorney, HENRY L. GARLAND, JR.

Order.

The court considering the foregoing petition, and particularly the intervention of the State of Louisiana, by her attorney general, and of the creditors mentioned, it is ordered that John W. Watson be, and he is hereby, appointed receiver to the Louisiana Printing and Publishing Company, Limited, with full power to liquidate and wind up its affairs. Let said John W. Watson take the proper legal oath and otherwise properly qualify; let an inventory be taken by F. H. Mortemer, notary public, of the assets and property of said Louisiana Printing and Publishing Company, Limited, in this parish, and let H. Messonnier and Pat. J. Kelley be appointed appraisers to value said property, and let W. K. Horn, Esq., be appointed to represent absent creditors herein.

New Orleans, May 17th, 1893.

(Signed) T. C. W. E., *Judge.*

Petition of Intervention of the State of Louisiana.

Filed May 18th, 1893.

Civil District Court, Parish of Orleans, Division "A."

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

The petition of intervention of the State of Louisiana, herein represented by her attorney general, Milton J. Cunningham.

233 That it appoars from the averments of the original petition herein that the said Louisiana Printing and Publis.ing Company, Limited, is insolvent and has abandoned its corporate franchises and privileges and is unable or refuse- any longer to perform its corporate functions.

That the charter of said corporation should therefore be annulled and the said corporation dissolved and its property and affairs wound up and its assets distributed according to law by a liquidator or receiver appointed by this hon. court.

Where- petitioner prays as in the original petition and for all necessary orders and general relief.

M. J. CUNNINGHAM,
Attorney General.

Order.

Let this petition of intervention be filed according to law.
New Orleans, May 18th, 1893.
(Signed) T. C. W. ELLIS, *Judge.*

Petition to Fix Bond.

Filed June 6th, 1893.

Civil District Court, Parish of Orleans, Division "A."

In re FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY, Limited. } No. 39100.

The petition of John W. Watson, herein appointed receiver to the Louisiana Printing and Publishing Co., Ltd, with respect represents that by reason of complications and interference with his free and full possession of the assets of defendant Co. he has not been able as yet to complete the inventory herein directed to be taken
234 with a view of fixing the amount of the bond he is directed to give herein.

That the inventory is nearly completed and shows that the assets of said company will be worth approximately the sum of eight thousand dollars; that it is absolutely necessary, to avoid complication and injurious litigation, he should give a bond at once so as to remove any possible question as to perfection of his appointment; that he should have full authority to appear as plaintiff or defendant in any suit in any court affecting the interesrts of said Louisiana Printing and Publishing Company, Limited, and to employ counsel to defend the interests of said company and to wind up its affairs.

Wherefore said receiver prays that his bond be fixed at the figure indicated as the probable value of all the assets of the company, and that he have authority to appear as plaintiff, defendant, or intervenor in any suit in any court touching the interests of said Co., and that he have authority to employ counsel to defend or prosecute any and all suits and to wind up the affairs of said company.

Prays for all orders and for general relief.
(Signed) By his att'y, HENRY L. GARLAND, JR.

Order.

The foregoing petition considered, it is ordered that John W. Watson, receiver herein, do give a bond, with one or more sureties according to law, in the sum of ten thousand dollars, conditioned upon his discharging faithfully and well the duties of receiver to the Louisiana Printing and Publishing Company, Limited, and of accounting to the court when lawfully required. It is further ordered that said receiver have authority to prosecute or defend any

and all suits in any courts affecting the interests of said company, and that he have authority to employ counsel to prosecute
235 or defend such suits, if any, and to wind up the affairs of said company.

New Orleans, June 6, 1893.

(Signed) THOS. C. W. ELLIS, *Judge.*

Rule of Lyons and Norwood.

Filed Sept. 14th, 1893.

Civil District Court, Parish of Orleans, Division "A."

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

On motion of B. R. Forman, attorney for Thomas B. Lyons and for D. J. Norwood, and on showing to the court that your mover Lyons leased to the defendant company the house No. 41 Natchez street for one year, from 1st Oct., 1892, to 30 Sept., 1893, at $50 per month, with a stipulation to pay 10 % attorneys' fees in case of suit, and three hundred dollars' rent are due and unpaid, and mover has a lessor's lien and privilege in the nature of a pledge on the movables contained in the leased premises and a right to take and keep the movables until his rent is paid, and your mover also has a right to be put in possession on 30 Sept., 1893, at the end of the lease, and your mover D. J. Norwood leased for the same time and at the same rate the premises 43 Natchez street, and the sum of $300 and interest and attorneys' fees is also due to mover; that the property on which movers have a lien and privilege is lawfully in the possession of John W. Watson, receiver appointed by this court, and he was first placed in legal possession by the orders of this court; that, in contempt and disregard of the authority of the court, the Remington Paper Company, represented by Messrs. Merrick and Merrick, sued out an attachment and caused J. B. Donnally,
236 the U. S. marshall, to seize the property in the hands of an officer of this court; that the Hon. E. C. Billings, judge of the U. S. circuit court, and the said court has dissolved and set aside the attachment, and the said Remington Paper Co. have not appealed from said judgment, nor taken a writ of error, nor applied to this hon. court to permit the said attachment to hold, and, notwithstanding the attachment and seizure is now finally dissolved and set aside and no appeal or writ of error has been taken, the said Marshall Donnally, under the directions and instigation of the Remington Paper Company, claims to hold the property, in contempt and disregard of the authority of this court, and your movers are entitled to their rent and to posses-ion, and since this is the renting season they will be damaged each in the sum of six hundred dollars by not getting possession in order to lease for the ensuing year: It is ordered by the court that John B. Donnally and

the Remington Paper Co. show cause on the return day of this rule why they should not cease and desist from in any way interfering with John W. Watson, receiver, in the possession and enjoyment of the property of the Louisiana Printing and Publishing Company and be punished for contempt of the authority of this court and the receiver be protected in his possession, and that said John W. Watson, receiver of the Louisiana Printing and Publishing Company, be ordered to show cause on the 19th day of September, 1893, at 12 m., why he should not be condemned to pay to your mover Thomas B. Lyons three hundred dollars, with 8 % interest on each installment of $50 thereof from maturity until paid, say from 1st May, 1893, and each succeeding month, and ten per cent. attorneys' fees, with lessors' lien and privilege in the nature of a pledge on the movables contained in the leased premises No. 41 Natchez street, and the said property be ordered to be sold forthwith and mover paid out of the proceeds, and why he should not be ordered
237 to give mover the possession of said house, 41 Natchez street, on or before 30 Sept., 1893, and why he should not be condemned to pay to your mover D. J. Norwood the sum of $300, with like interest and attorneys' fees, with lessors' lien and privilege on the property contained in 43 Natchez street, and the property be ordered to be sold forthwith and mover be paid out of the proceeds, and the receiver be ordered to give mover the possession on or before the 30 Sept., 1893, and why such further relief should not be granted in the premises.

Service accepted.

Judgment.

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 39100.

On rule of T. B. Lyons and D. J. Norwood.

Present: B. R. Forman, attorney for plaintiff in rule; H. L. Garland, Jr., for John W. Watson, receiver, and E. T. Merrick, Jr., for Remington Paper Company, and J. B. Donnally, U. S. marshal.

When, after hearing evidence and counsel and for the reasons orally assigned, and it appearing to the court that the court had on the 17 May, 1893, appointed John W. Watson receiver of the Louisiana Printing and Publishing Company, and he on the same day took his oath and entered into possession, custody, and control of the property of the Louisiana Printing and Publishing Company, and was in possession as an officer of this court, when on the 29 May, 1893, the said J. B. Donnally, U. S. marshal, under writs of attachment and sequestration issued from the United
238 States circuit court, forcibly dispos-ed the receiver and disregarded the authority of this court in possession through its receiver, and subsequently the United States circuit court on 6th June, 1893, "ordered" that the "marshal restore the property seized in this cause under the writs of attachment and sequestra-

tion to John W. Watson, receiver, unless within five days the Remington Paper Company applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs;" and it further appearing to this court that the Remington Paper Company has not applied for nor obtained from this court authority for the marshall to hold the property under the writs:

It is therefore ordered, adjudged, and decreed that so far as this is a rule for contempt is concerned, it not appearing that the marshall was officially notified of the proceedings here, the question of contempt is reserved. It is further ordered that the possession of the receiver, John W. Watson, be maintained, and J. B. Donnally, United States marshall, and the Remington Paper Company do cease and desist from all interference with John W. Watson, the receiver, in the possession of the property of the Louisiana Printing and Publishing Company, and especially of the printing presses, type, &c., and contents of the houses 41 and 43 Natchez street; and it is further ordered that John W. Watson, receiver, be instructed to proceed with his duties, and the rule be so far made absolute as to order the receiver to sell the property contained in the buildings Nos. 41 and 43 Natchez street after thirty days' advertisement, and the receiver will be authorized on the filing of his account to pay the rent of the two buildings, Nos. 41 and 43 Natchez street, for the month of October, 1893, and the rights of the Remington Paper Company and of the lessors as well as of all other creditors
239 are reserved and referred to the proceeds, and in other respects the ruling of the court is reserved.

A copy of this order shall be served upon the United States marshall.

New Orleans, La., Sept. 19, 1893.

(Signed) THOS. C. W. ELLIS, *Judge.*

Motion of Thos. B. Lyons and D. J. Norwood.

Filed Sept. 22nd, 1893.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

THURSDAY, *the 14th Day of Sept.*, 1893.

Present: The Honorable T. C. W. Ellis, judge.

FRANK POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO. } No. 39100.

On motion of B. R. Forman, attorney for Thos. B. Lyons and D. J. Norwood, and for the reasons on file, it is ordered by the court that John B. Donnelly and the Remington Paper Co. show cause on the return day of this rule why they should not cease and desist from in any way interfering with John W. Watson, receiver, in the

possession and enjoyment of the property of the Louisiana Printing and Publishing Company and be punished for contempt of the authority of this court and the receiver be protected in his possession, and that said John W. Watson, receiver of the Louisiana Printing and Publishing Company, be ordered to show cause on the 19th day of September, 1893, at 12 m., why he should not be condemned to pay to your mover Thomas B. Lyons three hundred dollars, with 8 % interest on each instalment of $50 thereof
240 from maturity until paid, say from 1st May, 1893, and each succeeding month, and ten per cent. attorneys' fees, with lessors' lien and privilege, in the nature of a pledge, on the movables contained in the leased premises No. 41 Natchez St., and the said property be ordered to be sold forthwith and mover paid out of the proceeds, and why he should not be ordered to give mover the possession of said house No. 41 Natchez St. on or before Sept. 30, 1893, and why he should not be condemned to pay to your mover D. J. Norwood the sum of $300, with like interest and att'ys' fees, with lessors' lien and privilege on the property contained in 43 Natchez St., and the property be ordered to be sold forthwith and mover paid out of the proceeds, and the receiver be ordered to give mover the possession on or before the 30 Sept., 1893.

Extract from the minutes.

(Signed) H. MESSONNIER, *D'y Clerk.*

Sheriff's Return.

Received Saturday, Sep. 16, 1893, and on the same day, month, and year I served a copy of the within rule on the Remington Paper Company herein named, through Merrick and Merrick, their attorneys, by personal service on E. T. Merrick, Jr., a member of said firm.

Sheriff's fees, 50c.

Returned same day.

(Signed) CARSON MUDGE,
Deputy Sheriff.

And on the same day, month, and year I served a copy of the within rule on J. B. Donnelly, U. S. marshall herein named, by leaving the same, at his office in custom-house, in the hands of Mr. T. J. Galbreath, his chief clerk, said J. B. Donnelly being absent from his office at time of said service.

Sheriff's fees, 50c.

Returned same day.

(Signed) CARSON MUDGE,
Deputy Sheriff.

241 *Order of T. C. W. Ellis, Judge.*

Dated September 26, 1893.

Civil District Court for the Parish of Orleans.

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 39100.

On rule — T. B. Lyons and D. J. Norwood.

The court having reserved its ruling on the claims of plaintiffs in rule, and it appearing to the court that the plaintiffs in rule have the legal right to have their rent paid before the property on which they have a lien and privilege in the nature of a pledge is recovered out of the leased premises, and have a right to the possession thereof on or before the 30 September, 1893, and there is cash in the hands of the receiver sufficient to pay the rent, and after full consultation with the receiver this day, it is now further ordered that John W. Watson, receiver of the Louisiana Printing and Publishing Company, do forthwith pay to D. J. Norwood the sum of three hundred dollars, with 5% per annum interest on $50 thereof from 1st April, 1893, and on each monthly installment thereof from the first of each succeeding month, and that he do vacate and give possession of the premises No. 43 Natchez street to said Norwood on or before the 30 September, 1893; and it is further ordered that the said John W. Watson, receiver, do forthwith pay to Thos. B. Lyons the sum of three hundred dollars, with (8%) eight per cent. interest on $50.00 from 1st April, 1893, and on each monthly installment of $50 from the first of each succeeding month; and unless the receiver do on or before the 30 September, 1893, vacate and give possession of the building No. 41 Natchez street to said Lyons, that he be au-
242 thorized, directed, and commanded to lease the said building No. 41 Natchez street for one year from the 1 Oct., 1893, at $50 per month; and should the receiver dispose of the movable property therein contained and have no further use for the property, he is hereby authorized to sell the unexpired lease ending Sept., 1894, or sublease the property in his discretion for the use and benefit of the estate in his administration as receiver. It is a condition of this authorization to the receiver to have the property 41 Natchez street *Natchez street* that T. B. Lyons shall interpose no obstacle to the sale of the property of the Louisiana Printing and Publishing Company and its delivery; and it appearing to the court that J. B. Donnelly, United States marshal, has surrendered the property of the defendant company to the receiver, the rule for contempt is discharged.

New Orleans, La., September 26, 1893.

(Signed) THOS. C. W. ELLIS, *Judge.*

Answer of Remington Paper Company to Rule of Landlord for Contempt.

Filed September 19, 1893.

Civil District Court, Division "A."

FRANK POPE
vs.
LA. PRINTING AND PUBLISHING CO., LMT. } No. 39100.

Now into court comes the Remington Paper Company, through undersigned counsel, and for exception say- that this court is without jurisdiction to pass upon their right to hold the property seized or to interfere in any way with this defendant, for the reason that they hold the property under a writ of attachment issued
243 from the circuit court of the United States for the fifth circuit and eastern district of Louisiana, that any proceedings taken by plaintiff in the rule should be brought in said court.

In case this exception is overruled, and in that case only, this defendant, for further exception, shows that the plaintiff is without interest in taking said rule, in so far as said rule applies to this defendant.

In case the foregoing exceptions are overruled and without waiving same, this defendant, for answer to the rule taken in this case, denies all and singular each and every allegation therein contained, save only what is hereinafter specially admitted. This defendant admits having the said property under seizure under a valid writ of attachment from the U. S. circuit court, in suit 12197 of the docket of said court, in suit entitled Remington Paper Co. *vs.* Louisiana Printing and Publishing Co., Lmt.

This defendant denies that said writ of attachment has ever been dissolved or set aside.

Wherefore this defendant prays to be hence dismissed with his costs, and for all general relief.

(Signed) MERRICK AND MERRICK, *At'ys.*

Answer of J. B. Donnelly to Landlords' Rule for Contempt.

Filed September 19, 1893.

Civil District Court, Division "A."

FRANK POPE
vs.
LA. PRINTING AND PUBLISHING CO., LMT. } No. 39100.

Now into court comes *the* Jno. B. Donnally, through
244 undersigned counsel, and for exception say- that this court is without jurisdiction to pass upon *their* right to hold the property seized or to interfere in any way with this defendant, for

the reason that *they* hold the property under a writ of attachment issued from the circuit court of the United States for the fifth circuit and eastern district of Louisiana; that any proceedings taken by plaintiff in the rule should be brought in said court.

In case this exception is overruled, and in that case only, this defendant, for further exception, shows that the plaintiff is without interest in taking said rule, in so far as said rule applies to this defendant, and this defendant cannot be prosecuted individually in a State court for acts done by him in his capacity as United States marshal.

In case the foregoing exceptions are overruled and without waiving same, this defendant, for answer to the rule taken in this case, denies all and singular each and every allegation therein contained, save only what is hereinafter especially admitted. This defendant admits having the said property under seizure under a vaild writ of attachment from the U. S. circuit court in suit 12197 of the docket of said court, in suit entitled Remington Paper Co. *vs.* Louisiana Printing and Publishing Co., Lmt.

This defendant denies that said writ of attachment has ever been dissolved or set aside.

Wherefore this defendant prays to be hence dismissed with his costs, and for all general relief.

(Signed) MERRICK AND MERRICK, *Att'ys.*

Petition of Intervention of the "Memphis Commercial" and of A. W. Hyatt Stationary and Manufacturing Co., Ltd.

Filed May 18, 1893.

245 Civil District Court, Parish of Orleans.

FRANK H. POPE
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 39100.

The petition of intervention of the "Memphis Commercial" Publishing Co. — of the A. W. Hyatt Stationary and Manufacturing Co., Ltd., respectfully represent that they are creditors of said Louisiana Printing and Publishing Company, Limited.

That your petitioners believe and aver the facts to be as stated in the original petition herein.

That it is necessary, in order to protect the interest of all parties concerned, both stockholders and creditors, that a receiver or liquidator to said corporation should be at once appointed by this court.

Wherefore petitioners join in the prayer of the original plaintiff and urge upon the court the necessity of taking action at once.

(Signed) WM. K. HORN,
Att'y for Memphis Commercial—Claim, $900.00.

(Signed) A. W. HYATT,
Sta. Mnf. Co., Ltd., $71.45.

Order.

Let this petition of intervention be filed according to law.
New Orleans, May 18th, 1893.
(Signed) T. C. W. ELLIS, *Judge.*

246 *Copy of Motion of John W. Watson, Receiver, to Quash Writs, &c., from U. S. Circuit Court.*

Filed September 6th, 1893.

U. S. Circuit Court for the Eastern District of La.

REMINGTON PAPER CO.
vs.
LOUISIANA PRINTING AND PUBLISHING CO., LTD. } No. 12197.

On motion of John W. Watson, receiver of the Louisiana Printing and Publishing Co., Limited, duly appointed by the civil district court for the parish of Orleans in the proceedings entitled "*In re* Frank H. Pope *vs.* Louisiana Printing and Pub. Co., Limited, No. 39100 of the docket of said court, division E, on May 17th, 1893, and on suggesting to the court that mover since May 17th, 1893, has been and now is in possession of all the assets and property of said Louisiana Printing and Publishing Co., Limited, under and by virtue of his appointment as receiver in said proceedings, and that mover holds and has custody of said assets and property for and as the officer of the said civil district court for the parish of Orleans, and has had such position continuously since his appointment on May 17th, 1893;

Further suggesting that notwithstanding the appointment of mover as receiver of said company, and notwithstanding the possession by mover of the assets and property of said company in his capacity of receiver thereof, as aforesaid, and notwithstanding that all the property and assets of said company are in the custody and control of said civil district court for the parish of Orleans, through mover, as receiver appointed by said court, the plaintiff in the above entitled and numbered suit in this honorable court has prayed for and obtained from this court an order of attachment and
247 sequestration of the property so in the custody and possession of mover, as the receiver of the civil district court for the parish of Orleans, as aforesaid; that the seizure of said property and assets in the suit in this court, after the appointment of a receiver by the civil district court for the parish of Orleans, is null and void, and should be at once released and set aside as having been made in violation and disregard of the jurisdiction, custody, and control of the civil district court for the parish of Orleans, first exercised on the property herein attached; and on showing to the court the record of the proceedings wherein mover has been appointed as receiver as aforesaid, it is ordered that the attachment

and sequestration and seizure herein made of the property and assets of the said Louisiana Printing and Publishing Co., Limited, be, and the same is hereby, ordered to be released and set aside.

(*Order of Court Made on Foregoing Motion to Quash Writs.*)

Let this rule be filed, and let the Remington Paper Co., through their attorneys, Merrick and Merrick, show cause, on Thursday, June 1st, 1893, at 11 a. m., why the above motion should not be granted.

New Orleans, May 30, 1893.

(Signed) EDWARD C. BILLINGS, *Judge.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., May 31, '93, and I served copy hereof by handing same to E. T. Merrick, Jr., a member of the firm of Merrick and Merrick, att'ys of record for pl'ff.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By T. S. DELONY, *D'y.*

248 Endorsed: Signed for identification as being referred to by me in bill of exceptions No. 1. (Signed) Edward C. Billings, judge.

Exception and Answer of Plaintiff to Rule.

U. S. Circuit Court, Eastern Dist. of La.

REMINGTON PAPER COMPANY
vs.
THE LA. PRINTING AND PUB. COMPANY, LIM. } No. 12197.

The plaintiff in this case, for the purpose only of objection to the regularity of the rule taken by John W. Watson, calling himself receiver, by way of exception, says:

That said mover, as a pretended receiver, cannot interfere in the progress of this suit in the informal and summary manner attempted by him in his said rule, nor has he any right to be heard to demand by the judgment of this court anything of this court without coming into court by regular process and proceedings and in the mode allowed by law, wherein the plaintiff will be entitled to a trial of questions of law and fact in the mode and manner guaranteed by the Constitution and prescribed by law.

Wherefore this plaintiff says that this rule, taken by said John W. Watson, should and ought to be dismissed at the costs of said mover.

(Signed) MERRICK AND MERRICK, *Att'ys.*

And in the event the foregoing exception to said rule is overruled and this plaintiff is required by your honorable court
249 to answer the same, and not otherwise, this plaintiff denies the allegations contained in said rule, and denies that said John W. Watson, the pretended receiver, has any legal right or authority under the *ex parte* proceeding on which he relies to take possession of the property attached in this case, nor to hinder or delay your petitioner from collecting its just debt against said defendant.

(Signed) MERRICK AND MERRICK, *Att'ys.*

(Filed June 3, 1893.)

Endorsed: Signed for identification as being referred to by me in bill of exceptions No. 1. (Signed) Edward C. Billings, judge.

Opinion of Court on Rule and Exception.

Filed June 6, 1893.

Circuit Court of the United States, Eastern District of Louisiana.

THE REMINGTON PAPER CO.
vs.
LA. PRINTING AND PUBLISHING COMPANY. } No. 12197.

BILLINGS, *Judge:*

In this case writs of attachment and sequestration have been issued against the property of the defendants.

John W. Watson has taken a rule in this court to have these writs set aside, averring that after the institution of a proper suit in the civil district court for the parish of Orleans he was by that court appointed receiver of the property and effects of the
250 defendants and as such receiver was in possession of certain property of the defendants, through its agents, when the marshal made the seizure in his hands.

It is urged by the plaintiff in this suit that the proceeding by the receiver should have been by intervention; that he cannot proceed by rule. I have no doubt that, as a general thing, the intervention must be resorted to by a person other than an original party to the suit, but I cannot see that in this case any harm can come by allowing the matter to be heard by rule. In either case there is a liability for costs, the result would have been the same, and in the rule greater expedition was allowable. The receiver is as fully here as if he had intervened. I think, therefore, I ought to allow him to proceed by rule.

The argument in the case has taken a wide range, but, in my view of the case, Watson, by the duly authenticated order of the civil district court, is shown to have been appointed receiver upon a petition of a creditor of the defendants and the intervention of the attorney general, which original and intervening petitions averred

that all the officers of the defendant corporation had resigned, and that it was in fact a vacant corporation. I do not think this court can deal at all with the alleged irregularity in the appointment of the receiver, such as the alleged want of an execution, etc., preceding the appointment. It appearing to this court that a court of concurrent jurisdiction has appointed a receiver, who was in actual possession, this court has no right to attempt to dispossess him. All the matter as to irregularity of the appointment must be dealt with by the court that appointed. I understand the doctrine of the comity of courts to be this, that where a court has jurisdiction of a cause and property and, through its proper officer, is in possession, it is the duty of all other courts to refrain altogether from
251 the attempt to take that property into possession except by permission of the court in possession. It is not a question of the validity of process, but a question of public order, and the rule of comity is based upon the duty of courts to abstain from anything that might lead to violence. There having been a receiver appointed by a court of competent jurisdiction and he being in possession of the property attempted to be seized by the marshal*l* and which was in fact seized, I think the duty of this court is to restore the property practically to the situation in which it was when the property was interfered with by the marshal*l*. The order of this court therefore is that marshal*l* restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court, which appointed Watson, or from the appellate court to hold same under said writs.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the originals on file and of record in this office.

[SEAL.] Witness my hand and seal of said court, at the city of New Orleans, this 30th day of June, 1893.

(Signed) E. R. HUNT, *Clerk.*

Copy of Order of Judge T. C. W. Ellis Served on U. S. Marshall, with Sheriff's Returns, Dated September 19, 1893.

THE STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

252 I hereby certify that on the — judgment on rule was rendered in this court in the following-entitled suit in the words and figures following, to wit:

FRANK POPE
vs.
LOUISIANA PRINTING AND PUBLISHING COMPANY. } No. 39100. Division "A."

On rule of T. B. Lyons and D. J. Norwood.

Present: B. R. Forman, attorney for plaintiff in rule; H. L. Garland, Jr., for John W. Watson, receiver, and E. J. Merrick, Jr., for Remongton Paper Company and J. B. Donnally, U. S. marshal*l*.

When, after hearing evidence and counsel, and for the reasons orally assigned, and it appearing to the court that the court had on the 17th May, 1893, appointed John W. Watson receiver of the Louisiana Printing and Publishing Company, and he on the same day took his oath and entered into possession, custody, and control of the property of the Louisiana Printing and Publishing Company, and was in possession as an officer of this court when, on the 29 May, 1893, the said J. B. Donnally, U. S. marshal*l*, under writs of attachment and sequestration issued from the United States circuit court, forcibly dispossessed the receiver and disregarded the authority of this court, in possession through its receiver, and subsequently the United States circuit court, on 6th June, 1893, "ordered" that the marshal*l* restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the Remington Paper Company applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same "under said writs;" and it further appearing to this court that the Remington Paper Company has not applied for nor obtained from this court
253 authority for the marshal*l* to hold the property under the writs, it is therefore ordered, adjudged, and decreed that, so far as this is a rule for contempt is concerned, it not appearing that the marshal*l* was officially satisfied of the proceedings here, the question of contempt is reserved. It is further ordered that the possession of the receiver, John W. Watson, be maintained, and J. B. Donnally, United States marshal*l*, and the Remington Paper Company do cease and desist from all interference with John W. Watson, the receiver in the possession of the property of the Louisiana Printing and Publishing Company, and especially of the printing presses, type, &c., and contents of the houses 41 and 43 Natchez street; and it is further ordered that John W. Watson, receiver, be instructed to proceed with his duties, and the rule be so far made absolute as to order the receiver to sell the property contained in the buildings Nos. 41 and 43 Natchez street after thirty days' advertisement, and the receiver will be authorized on the filing of his account to pay the rent of the two building, Nos. 41 and 43 Natchez street, for the month of October, 1893, and the rights of the Remington Paper Company and of the lessors, as well as of all other creditors, are reserved and referred to the proceeds, and in other respects the ruling of the court is reserved.

A copy of this order shall be served upon the United States marshal*l*.

New Orleans, La., Sept. 19, 1893.

[SEAL.] (Signed) THOS. C. W. ELLIS, *Judge.*

In testimony whereof I have hereunto set my hand and fixed the seal of the said court, at the city of New Orleans, on this twentieth day of September, in the year of our Lord one thousand
254 eight hundred and ninety-three.

(Signed) GEO. STROBEL,
Deputy Clerk.

Sheriff's Return.

Received Thursday, Sep. 21, 1893, and on the same day, month, and year I served a copy of the within judgment on J. B. Donnally, U. S. marshal, herein named, by leaving the same at his office, in custom-house, in the hands of T. J. Galbreth, his clerk, said J. B. Donnally, U. S. marshal, being absent from this city at time of said service.

Returned same day.

Sheriff's fees, 50c.

(Signed) CARSON MUDGE,
Deputy Sheriff.

Proceedings Had in the Supreme Court of the State of Louisiana on the Appeal Taken by the Plaintiffs in the Case Entitled Remington Paper Company vs. John W. Watson et al.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL. } No. 12287.

Transcript of appeal. Filed December 1st, 1896.

Assignment of Errors.

Filed December 1st, 1896.

Supreme Court of Louisiana.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 12287.

255 *Assignment of Errors.*

The plaintiff and appellant comes and assigns the following errors of the lower court, shown in the transcript of appeal and the bills of exception therein filed in this court by the appellant in the said above-entitled case of The Remington Paper Company, appellant, *vs.* John W. Watson and others, appellees, from the judgment of the civil district court of the parish of Orleans, division A, viz:

First. Appellant assigns as error that whereas the said Remington Paper Co., the plaintiff, a citizen of the State of New York, did, on the 29th day of May, 1893, institute an action at law in the circuit court of the United States for the eastern district of Louisiana for the recovery of a debt against the Louisiana Printing and Pub-

lishing Co., Limited, a corporation and a citizen of the State of Louisiana, on the law side of said circuit court, having jurisdiction over said case, to recover the sum of thirty-eight hundred and sixty-three $\frac{55}{100}$ ($3,863.55) dollars, due by said defendant in that court, with interest, and said plaintiff—there having been legal and just grounds for the same—obtained from said United States circuit court, on sufficient showing, with proof and bond, a writ of attachment and sequestration, which said writs were served on said Louisiana Printing and Publishing Co., Limited, by the marshall of the United States for said eastern district of Louisiana on the 29th day of May, 1893, and the property subject to said writs, sufficient in value to pay and satisfy petitioner's debt, was seized and taken into the custody of said marshall, an officer of said court of the United States, which said suit and its incidents in said circuit court of the United States, the same having jurisdiction thereof, is still pending against the said Louisiana Printing and Publishing Company, Limited; and whereas the said civil district court of the parish of
256 Orleans, division A, did, on the 17th day of May, 1893, in a proceeding without parties, affidavits, or proof or bond, make an order in form, the same being in fact absolutely null and void and of no legal effect, wherein said John W. Watson was ostensibly appointed a so-called receiver to the said Louisiana Printing and Publishing Co., Limited, and said John W. Watson, on the 18th day of May, filed in the same court a supposed oath of office under said illegal and void *ex parte* order; and whereas said order of said district court was absolutely null and void as against third persons and also as against the said Louisiana Printing and Publishing Co., Limited, a corporation with a charter unforfeited, the debtor of plaintiff, whose ownership of property could not be divested to the prejudice of creditors on an arbitrary order without due process of law; and whereas the said John W. Watson, by wrongfully representing himself as a receiver and in possession of said attached and sequestered property, as such, of said Louisiana Printing and Publishing Co., Limited, on the pretence of said void order of May 17th, 1893, obtained an order in that court directing the said marshall to release said property to said Watson, unless petitioner within five (5) days brought suit in the State court (this suit being a compliance with that order) for authority to prosecute that suit; and whereas petitioner's right to prosecute its said suit against its said debtor, an existing corporation, was and is by law and the Constitution a well-established right, of which petitioner cannot be deprived without due process of law: Now, therefore, said judgment of the lower court is erroneous in sustaining said *ex parte* and void order of 17th May, 1893, and in refusing to declare the same to be null and void as no obstacle to petitioner's further prosecution of said suit and as conferring no valid or actual authority to deprive petitioner's said debtor of its ownership
257 and possession of its property, and to hinder, delay, or to defeat petitioner in the recovery of its just debt against its said debtor.

Second. The plaintiff having a constitutional and just cause of

action against its said debtor, and, by reason of citizenship, a just right to bring its action in the said circuit court of the United States for the eastern district of Louisiana, of which said right to sue in said court petitioner availed itself, and having rightfully seized by attachment and sequestration the property of its said debtor subject to said seizure, the said lower court erred against and in violation of the Constitution and laws and the powers and duties of the officers of the United States conferred by law in maintaining said *ex parte* and absolutely null and void order of 17th May, 1893, against the vested rights of petitioner to prosecute said suit in said court of the United States against its said debtor, as shown by said transcript of said circuit court of the United States on file in this case and made a part of the bill of exceptions.

Third. The said lower court also erred in allowing the defendant to offer in evidence, in justification of their action, the document entitled "Division A, civil district court for the parish of Orleans; Frank Pope *vs.* The Louisiana Printing and Publishing Co.; rule of Lyons *vs.* Norwood; filed September 14th, 1893; H. Messonnier, d'y clerk; and my decree thereon, dated September 19th, 1893; which said rule and decree indorsed thereon in full I have identified with this bill of exceptions by my signature."

Which said rule in said State court, identified as aforesaid, was served on plaintiff's counsel and the said marshall of the United States, having custody of the property seized, subject to petitioner's debt, charging them also with contempt of said State court on account of the detention of said property under said writs — the 16th day of September, 1893, with said rule filed on the 14th
258 day of September, 1893, which was taken by Thos. B. Lyon and D. J. Norwood, offered, as aforesaid, in justification by defendants, and were offered with said rule, the answer of J. B. Donnelly, the marshall of the United States, and the answer of petitioner's attorney on behalf of petitioner, denying the jurisdiction of said State court, and plaintiff's bill of exception, filed October 12th, 1893, in said proceedings in the said rule of T. B. Lyons and D. J. Norwood, as well as the order of said State district court of 26th day of November, 1896.

And the said lower court erred in admitting said proceedings and orders taken and made and executed under said rule against J. B. Donnelly, the said United States marshall having custody of said property under the writs of said United States court, and petitioner as a suitor in said United States court, and depriving petitioner of its rights against its debtor, then and still being an existing corporation, on the ground that said proceeding before the lower court in all its particulars was *coram non judice;* which excess of jurisdiction assumed by the lower court in the language of the courts of the United States is sometimes called an usurpation, and it is utterly null and void and in no way binding on plaintiff, but, on the contrary, shows the unjustifiable damage done by the defendants to plaintiff in their unwarranted acts in attempting to prevent the prosecution of its right in said court.

Fourth assignment of errors. The said lower court also erred in re-

ceiving in evidence, against plaintiff's objections, as a defense in favor of defendants any and all the proceedings of the defendants or any of them or others under the said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, offered in this case on or after and subsequent to said 29th day of May, 1893, on the ground that the juris-
259 diction of the circuit court of the United States having rightfully attached in the said case of petitioner against its debtor, the Louisiana Printing and Publishing Co., Limited, at said date, the rights of plaintiff could not be defeated or ousted by any subsequent proceedings on the part of the defendants or any of them, nor could said plaintiff's debtor be deprived of its property, to plaintiff's great damage, without due process of law, and all of said proceedings in said *ex parte* proceeding entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, set up as a defence, are violations of article No. XIV of the — United States and null and void.

Fifth assignment of errors. The lower court erred in its judgment and conclusions on the whole case and in rendering judgment against petitioner and in favor of defendants, except so far as dismissing the reconventional demand.

Cause Submitted.

(Extract from the Minutes.)

NEW ORLEANS, SATURDAY, *April* 17*th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, associate justices.

Absent: Newton C. Blanchard, associate justice.

REMINGTON PAPER CO.
vs. } No. 12287.
JOHN W. WATSON ET AL.

This cause came on this day to be heard and was argued by counsel.

260 Mr. Edwin T. Merrick opened for the plaintiffs, appellants;

Mr. Henry L. Garland replied on behalf of the defendants, appellees; and

Mr. Merrick closed the argument, and the cause, having been submitted by counsel, was taken under advisement by the court upon the briefs for the parties in interest and the papers now on file.

Opinion of the Court.

Filed May 31st, 1897.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *May 31st*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

Mr. Justice WATKINS:

REMINGTON PAPER COMPANY *vs.* JOHN W. WATSON ET AL. } No. 12287.

261 Appeal from the civil district court for the parish of Orleans.

We have had the present litigation before us in two previous suits, viz:

State *ex rel.* Remington Paper Co. *vs.* Judge, 45th Ann., 1418, and Remington Paper Company *vs.* Watson, 46th Ann., 793. The last mentioned is the instant case, same having been an appeal by the plaintiff from a judgment dismissing its suit, on the ground that it disclosed no cause of action.

From our opinion in the case last cited, we find plaintiff's suit to have been an action to annul the appointment of John W. Watson as receiver of the Louisiana Printing and Publishing Company, Limited, for the purpose of enabling it to realize the amount of its claim out of the assets of the corporation, same being alleged to be secured by a vendor's lien upon certain paper, fixtures, and material, coupled with a demand for damages.

The prayer of the petition is that the *ex parte* order purporting to appoint John W. Watson receiver of the Louisiana Printing and Publishing Company be declared null and void and of no effect as against petitioner, and that same is ineffectual as a bar to its attachment and sequestration or other proceedings in the United States circuit court. It further prays that John W. Watson and Frank H. Pope be condemned *in solido* to pay petitioner's claim of three thousand eight hundred and sixty-three $\frac{55}{100}$ — against the Louisiana Printing and Publishing Company as damages.

The petition further shows that on the 29th of May, 1893, it commenced proceedings in the United States circuit court, and under writs of attachment and sequestration therein issued caused the

property affected by its vendor's lien to be seized, attached and sequestered, and taken into the custody of the United States
262 marshal.

That due and legal service of said proceedings was had on J. D. Hill, president of the Louisiana Printing and Publishing Company, on the date of the filing thereof, and that under the Constitution and laws of the United States it has the right and is entitled to prosecute said suit with effect without let or hindrance on the part of any person, being a citizen of the State of New York.

That, nevertheless, John W. Watson, in violation of petitioner's rights, falsely styling himself a receiver of the printing and publishing company and falsely stating that he was in possession of the property attached and sequestered in virtue of an appointment as such receiver, filed a motion in said circuit court to have said attachment and sequestration set aside.

That, said motion coming on for trial, said court, without passing on the force or validity of those proceedings, ordered the marshal to restore the property seized in said case to said Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson receiver or from the appellate court to hold same under said writ.

Petitioner then alleges that the aforesaid order will have the effect of preventing it obtaining a judgment against the printing and publishing company in the United States circuit court, as there is no mode of revising said order until a final judgment can be rendered in said cause.

Thereupon he assigns the following grounds for the revocation and annulment of the order appointing John W. Watson receiver, viz:

1st. That the pretended order under which John W. Watson was appointed and pretends to exercise authority as receiver, bearing date May 17th, 1893, was and is absolutely null and void as
263 against petitioner and other creditors of the publishing and printing company, and conferred no authority on Watson for the reason that same was made upon the collusive petition of Frank H. Pope and without citation to any one.

2nd. That said order was made without the oath or affidavit of any one or any proof, and wholly *ex parte* and without contradictory proceedings had with any one.

3rd. That said pretended order was made and endorsed upon the petition of Pope on the same day that it was filed, and in which there was no citation prayed for.

4th. That the officers of the publishing and printing company were incapable in law of withdrawing from their offices, so as to delay or hinder the creditors of said corporation from pursuing it in a court of justice in an effort to collect their debts, and that said corporation does not cease to exist until regular proceedings have been taken against its officers and stockholders under its charter.

5th. That the attempt to bolster up the illegal and *ex parte* proceedings by a so-called intervention on the part of the attorney

general will not cure the nullity of said *ex parte* proceedings of said Pope and Watson; and, moreover, said so-called intervention, which contains no affirmative allegations on the part of the State, but purports to recite and reiterate the allegations of Pope, is not a mode of proceeding authorized by law.

That the State is without right to intrude itself in this manner into controversies of private persons and to demand the forfeiture of the charter of a corporation in any mode different from that provided by law, and that the attorney general was without authority to join said Pope in his prayer in said *ex parte* petition and ask that a receiver be appointed.

That all of said proceedings were and are absolutely null
264 and void as against creditors.

From the foregoing it is evident that this suit is primarily an ancillary proceeding to that of same plaintiff in the United States circuit court against the corporation as its debtor, and wherein it caused its property and effects to be seized, attached, and sequestered, asserting a vendor's lien upon a portion of same; and, secondarily, an action to annul the order appointing the receiver, for certain alleged informalities in the proceedings, coupled with a demand for damages against Pope, the petitioning creditor, and Watson, the person who was appointed receiver.

It is evident that the plaintiff's demand for damages was made for the purpose of exhibiting the jurisdiction of the court to decree the nullity of the order appointing the receiver, and the necessity of its situation prevented it from asking judgment for its debt against the corporation, as that would have been an abandonment of its suit in the circuit court, which it intended to aid.

In support of and to give color to its claim for damages against those individuals, the plaintiff's petition avers that the two defendants named colluded and conspired together and procured the illegal proceedings through which the receiver was appointed, and that the object in obtaining the appointment of a receiver was to defeat the collection of debts of the creditors of the corporation in the usual and ordinary manner.

On the other hand, the contention of the defendants is that their proceedings were regular, legal, and in due course of law, and that upon an order of court, regularly and duly obtained from one of the judges of the civil district court, the receiver was appointed, and that he qualified and gave bond, the State, through the attorney general, concurring through the instrumentality of an intervention, filed with the leave of the court first obtained.

265 That the aforesaid proceedings were resorted to for the sole purpose of conserving the best interest and evident advantage of the corporation, its creditors in general, and its stockholders, it being at the time notoriously and confessedly insolvent and unable to continue its business; that on account of the unsettled and precarious condition of the business and affairs of the corporation, its officers and directors, in the exercise of an undoubted legal right, had resigned their trusts, and that, in consequence of this situation of affairs, the duty as well as the responsibility was placed upon the

creditors to protect their rights and prevent the loss, deterioration, and waste of the assets of the corporation and its absorption by a single creditor.

That the defendant Pope, being a stockholder as well as creditor of the corporation, conceived that the appointment of a receiver was more consonant with the interests of all than any other judicial proceedings, and in this view the State, through the attorney general, concurred.

It appears from the record that the receiver's appointment preceded the plaintiff's seizure in the United States circuit court several days, and that at the date he appeared by an intervention in that case and claimed and demanded the surrender of the property of the corporation which the marshal held under seizure he had not only received appointment, but he had qualified thereunder according to law, and had taken physical possession thereof under an inventory, notwithstanding he had not completed same and furnished bond, as required by the order of court appointing him.

The legal result of this situation of affairs is that the civil district court acquired jurisdiction over the corporation and of its property, and the judge of the United States circuit court recognized
266 that legal status when he entertained the intervention of the receiver in the plaintiff's case and ordered the marshal to surrender the property to him.

When the judge of that court made the order directing the marshal to restore the property seized, attached, and sequestered in that case into the custody of Watson, receiver, and added thereto the proviso "unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson receiver, or from the appellate court, to hold same under said writ." the presumption is that if the plaintiff failed to receive that authority the seizure would lapse and the jurisdiction of the United States circuit court would cease, and the authority of the marshal over the property would also cease.

The record shows that no such authority was ever applied for by the plaintiff or granted by the civil district court; but, on the contrary, this action of nullity and claim for damages was resorted to instead of such an application.

This is not a matter of legal deduction and conclusion alone, but one that has been judicially settled and determined by the judge *a quo* in a proceeding by rule taken by a creditor against the plaintiff and the marshal in the liquidation proceedings.

It thus appears that not only has the property seized and all other assets of the corporation passed into the custody and control of the receiver, but the suit of the plaintiff in the United States circuit court has become entirely disconnected from the liquidation proceedings and the insolvent corporation.

By this course of dealing the present suit stands alone upon its own merits as an independent action to annul the appointment of the receiver and a demand for damages against Pope and Watson personally; consequently the action to annul must necessarily de-

pend upon the demand for damages, for if the plaintiff has
267 no claim for damages, it would serve no useful purpose to render a judgment annulling the order appointing the receiver. *Cui bono?*

In the first place, addressing ourselves to the question of damages, we are of opinion that the plaintiff was plainly at fault in not employing the proper means to protect its own rights, (1) first, because it used no effort to avail itself of the permission granted by the circuit court whereby the seizure might have been retained on the property; (2) second, because it took no means or proceedings looking to the protection and preservation of its alleged vendors' lien upon the property after it had passed into the custody and control of the receiver, either by injunction against a sale by the receiver or a third opposition claiming the proceeds of sale, under a separate appraisement and sale.

In our view, such measures could have been easily resorted to on the part of the plaintiff, without prejudice to this or its circuit court suit, and, failing in this, an insurmountable obstacle has been raised to its claim for damages.

For surely the plaintiff cannot be heard to say that Watson and Pope have perpetrated upon it damages resulting from a loss and injury it has occasioned through its own fault.

The plaintiff's recourse against property stricken by a vendor's lien was just as efficacious against it in the hands of the receiver as it was in that of the marshal, and had it made proper and seasonable application to the judge *a quo*, possibly he might have permitted the marshal to reta... in his po session the property seized under the writ of attachment in the circuit court. However vain and nugatory such an effort may have proven, it was none the less its duty to have made the effort at least.

Surely the receiver cannot be said to have committed a wrong or trespass upon the plaintiff's rights by advertising and mak-
268 ing a sale of corporate assets in pursuance of an order of court to pay debts, especially when such sale was neither enjoined or opposed by it.

Presumably the proceeds of the sale are yet in the hands of the receiver for distribution according to law, and plaintiff can exercise its rights thereon.

In our opinion, this is not a case in which we are called upon to examine and scrutinize the legality of the appointment of a receiver, for the reason that the complaining creditor has not suffered any injury thereby and is itself seeking a preference.

We think the ends of justice would be best subserved by preserving and maintaining the *status quo*.

Judgment affirmed.

Mr. Justice Blanchard, not having been present at the submission of this cause, takes no part in this opinion.

Endorsed: No. 12287. Supreme court of the State of Louisiana. Remington Paper Company *vs.* John W. Watson *et al.* Appeal from the civil district court for the parish of Orleans.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *May* 31*st*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

REMINGTON PAPER CO.
vs.
JOHN W. WATSON ET AL. } No. 12287.

On appeal from the civil district court for the parish of Orleans.

Judgment affirmed.

269 (Mr. Justice Blanchard, not having been present at the submission of this cause, takes no part in this opinion.)

Petition for Rehearing.

Filed June 5th, 1897.

Supreme Court.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON. } No. 12287.

To the honorable the judges of the supreme court for the State of Louisiana:

The petition of the Remington Paper Co. respectfully represents:

First. That the court has fallen into error in its opinion that plaintiff has not disclosed a well-grounded claim for damages against the receiver personally.

Second. That the court has further erred in stating that your petitioner failed to avail itself of the option of applying to the State court within five (5) days for the purpose of sustaining the writ for the reason that this suit now before your honors on appeal is that application, and that the application could be made before the civil district court in no other form than by suit, without estopping petitioner from recovery.

Third. That by petitioner's said suit, now before your honors, which is the application required by the United States circuit court and which was made within the five (5) days, as prescribed, the writs of attachment and sequestration are still in force, and that the court is therefore in error in stating that petitioner made no

270 effort to preserve its lien; that the writs of sequestration preserved said lien, and that under said writs the said property was duly identified by petitioner and inventoried by the

United States marshal, as will appear by the record, and your petitioner could do nothing more to protect his lien.

This court has already decided that the lien was properly preserved in the following language in the 45 Ann., page 1421, State *ex rel.* Remington Paper Co. *vs.* Judge, to wit:

"The effect of an attachment or sequestration is to seize and hold property until it is subjected to the further order of the court. Being already in the hands of an officer of the court for distribution among creditors, the object to be accomplished by a seizure is already attained." * * *

Fourth. That the court is in error in stating that the property seized was voluntarily released by petitioner.

Fifth. That the court erred in not holding that the said proceedings in the United States circuit court in suit No. 12197, entitled Remington Paper Co., against The Louisiana Printing and Publishing Co., Limited, were valid and legal and proper and in accordance with the laws of the United States, and that the seizure therein under the writ of attachment could be set aside by any act on the part of defendant subsequently to said valid seizure in said court of the United States, and that plaintiff can be deprived of its privilege and vested rights as a suitor in the said United States court against its debtor, the Louisiana Printing and Publishing Co., Limited, by the *ex parte* proceedings of John W. Watson and Frank H. Pope.

Sixth. That the court has erred in now holding that no valid action for damages could be brought against John W. Watson, and that the present ruling of the court is contrary to the decision of the court in the 46 Ann., page 798, entitled Remington
271 Paper Company against Watson, where the court says:

"It is evident that this suit has for object the removal of the receiver, so as to leave the course of proceedings in the United States circuit court untrammeled and free, and if in point of law and fact his petition be taken as true he is undoubtedly entitled to judgment."

That in said case the court overruled the exception of no cause of action and decided that plaintiff had a valid cause of action in setting out the very facts which have been proven in this case.

Wherefore your petitioner prays the court that a rehearing may be granted in this case.

(Signed) EDWIN T. MERRICK, *Of Counsel.*

Endorsed: No. 12287. Supreme court of Louisiana. Remington Paper Co. *vs.* John W. Watson. Petition for rehearing. Filed June 5th, 1897. (Signed) Paul E. Mortimer, deputy clerk.

Rehearing Refused.

(Extract from the Minutes.)

NEW ORLEANS, WEDNESDAY, *June* 30, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux

Henry C. Miller, Newton C. Blanchard, associate justices. Absent: Francis T. Nicholls, chief justice.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL. } No. 12287.

It is ordered that the rehearing applied for in this case be refused.

272 *Petition for Writ of Error and Order.*

Filed July 9, 1897.

Supreme Court of La.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL. } No. 12287.

To the honorable the chief justice of the supreme court of the State of Louisiana:

And now comes the Remington Paper Co. of Watertown, New York, by Edwin T. Merrick and Albert Voorhies, as attorneys, and complains that in the record and proceedings, and also in the rendition of the judgment in a suit between The Remington Paper Co., plaintiff, and John W. Watson *et al.*, defendants, in the supreme court of the State of Louisiana, being the highest court of law and equity of the said State in which a decision could be had in said suit, in which a final judgment was rendered against it on the 30th day of June, 1897, in said suit, wherein the plaintiff assigns as error, among other things, that whereas the said Remington Paper Co., the plaintiff, a citizen of the State of New York, did, on the 29th day of May, 1893, institute an action at law in the circuit court of the United States for the eastern district of Louisiana for the recovery of a debt against the Louisiana Printing and Publishing Co., Limited, a corporation and a citizen of the State of Louisiana, on the law side of said circuit court, having jurisdiction of said case, to recover the sum of thirty-eight hundred and sixty-three and $\frac{55}{100}$ ($3,863.55) dollars, due by said defendant in that court, with interest, and said plaintiff, there having been legal and just grounds for the same, obtained from said United States circuit court, on sufficient showing with proof and bond, a writ of attachment and sequestration, which said writs were served on the
273 said Louisiana Printing and Publishing Co., Limited, by the marshal of the United States for said eastern district of Louisiana on the 29th day of May, 1893, and the property subject to said writs sufficient in value to pay and satisfy petitioner's debt was seized and taken into the custody of said marshal, an officer of said court of the United States, which said suit and its incidents in said circuit court of the United States, the same having jurisdiction thereof, is still pending against the said Louisiana Printing and

Publishing Company, Limited; and whereas the said civil district court of the parish of Orleans, division A, did on the 17th day of May, 1893, in a proceeding without parties, affidavits, or proof or bond, make an order in form, the same being, in fact, absolutely null and void and of no legal effect, wherein said John W. Watson was ostensibly appointed a so-called receiver to the said Louisiana Printing and Publishing Co., Limited, and said John W. Watson, on the 18th day of May, filed in the same court a supposed oath of office under said illegal and void *ex parte* order; and whereas said order of said district court was absolutely null and void as against third persons, and also as against the said Louisiana Printing and Publishing Co., Limited, a corporation with a charter unforfeited, the debtor of plaintiff, whose ownership of property could not be divested to the prejudice of creditors on an arbitrary order without due process of law; and whereas the said John W. Watson, by wrongfully representing himself as a receiver and in possession of said attached and sequestered property as such of said Louisiana Printing and Publishing Co., Limited, on the pretence of said void order of May 17th, 1893, obtained an order in that court directing the said marshal to release said property to said Watson unless petitioner within five (5) days brought suit in the State court (this suit being brought in compliance with that order) for au-
274 thority to prosecute that suit: and whereas petitioner's right to prosecute its said suit against its said debtor, an existing corporation, was and is by law and the constitution a well-established right, of which petitioner cannot be deprived without due process of law: Now, therefore, said judgment of the lower court is erroneous in sustaining said *ex parte* and void order of 17th of May, 1893, and in refusing to declare the same to be null and void and as no obstacle to petitioner's further prosecution of said suit, and as conferring no valid or actual authority to deprive petitioner's said debtor of its ownership and possession of its property, and to hinder, delay, or to defeat petitioner in the recovery of its just debt against its said debtor.

Second. That the plaintiff having a constitutional and just cause of action against its said debtor, and by reason of citizenship a just right to bring its action in the said circuit court of the United States for the eastern district of Louisiana, of which said right to sue in said court petitioner availed itself, and having rightfully seized by attachment and sequestration the property — its said debtor subject to said seizure, the said court erred against and in violation of the constitution and laws and the powers and duties of the officers of the United States conferred by law in maintaining said *ex parte* and absolutely null and void order of 17th May, 1893, against the vested rights of petitioner to prosecute said suit in said court of the United States against its said debtor, as shown by said transcript of said circuit court of the United States on file in this case and made a part of the bill of exceptions.

That the said court erred in receiving in evidence against plaintiff's objections as a defence in favor of defendants any and all the

proceedings of the defendants or any of them or others
275 under the said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, offered in this case on or after and subsequent to said 29th day of May, 1893, on the ground that the jurisdiction of the circuit court of the United States having rightfully attached in the said case of petitioner against its debtor, the Louisiana Printing and Publishing Co., Limited, at said date, the rights of plaintiff could not be defeated or ousted by any subsequent proceedings on the part of the defendants or any of them, nor could said plaintiff's debtor be deprived of its property to plaintiff's great damage without due process of law, and all of said proceedings in said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, set up as a defence, are violations of the fourteenth amendment of the United States, and are null and void.

All of which appears in the record and proceedings in said suit; manifest error hath happened, to the great damage of the said Remington Paper Company.

Wherefore it prays for the allowance of a writ of error and such other process as may cause the same to be correct- by the Supreme Court of the United States.

(Signed) ALBERT VOORHIES, *Att'y.*
(Signed) EDWIN T. MERRICK, *Att'y.*

Allowed.

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of Louisiana, the Chief Justice Being Absent from the State of Louisiana on Leave of Absence.

276 Endorsed: No. 12287. Supreme court, La. Remington Paper Company *vs.* John W. Watson *et al.* Petition for writ of error and order. Filed July 9, 1897. T. McC. Hyman, clerk.

NEW ORLEANS, *Aug.* 6, 1897.

On behalf of the several defendants in error I take notice of the foregoing petition and order for writ of error, and waive service of citations in error.

(Signed) HENRY L. GARLAND, JR.,
Att'y for Defendants in Error.

Assignment of Errors.

Filed July 9, 1897.

Supreme Court of the United States.

And in the matter of—

REMINGTON PAPER COMPANY, Plaintiff in Error,
vs.
JOHN W. WATSON, FRANK H. POPE, and THE LOUISIANA PRINTING and PUBLISHING Co., Limited, Defendants in Error.

Assignment of error-.

To wit, on the — day of ——, in the year of our Lord eighteen hundred and ninety-seven, at the October term for eighteen hundred and ninety-seven, — the Supreme Court of the United States, in the city of Washington and District of Columbia, comes the said Remington Paper Co., by Albert Voorhies, its attorney, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That whereas the said Remington Paper Co., the plaintiff in error, a citizen of the State of New York, did, on the 29th day — May, 1893, institute an action at law in the circuit court of the United States for the eastern district of Louisiana for the recovery of a debt against the Louisiana Printing and Publishing Co., Limited, a corporation and a citizen of the State of Louisiana, on law side of said circuit court, having jurisdiction over said case, to recover the sum of thirty — hundred and sixty-three and $\frac{55}{100}$
277 dollars ($3,863.55) due by said defendants in that court, with interest, and said plaintiff, there having been legal and just grounds for the same, obtained from said United States circuit court, on sufficient showing with proof and bond, a writ of attachment and sequestration, which said writs were served on said Louisiana Printing and Publishing Co., Limited, by the marshal of the United States for said eastern district of Louisiana, on the 29th day of May, 1893, and the property subject to said writs, sufficient in value to pay and satisfy petitioner's debt, was seized and taken into the custody of said marshal, an officer of said court of the United States, which said suit and its incidents in said circuit court of the United States, the same having jurisdiction thereof, is still pending against the said Louisiana Printing and Publishing Co., Limited; and whereas the said civil district court of the parish of Orleans, division A, did, on the 17th day of May, 1893, in a proceeding without parties, affidavits, or proof or bond, make an order in form, the same being in fact absolutely null and void and of no legal effect, wherein said John W. Watson was ostensibly appointed a so-called receiver to the said Louisiana Printing and Publishing Co., Limited, and said John W. Watson, on the 18th day of May, filed in the same court a supposed oath of office under said illegal and void *ex parte*

order; and whereas said order of said district court was absolutely null and void as against third persons, and also as against the said Louisiana Printing and Publishing Co., Limited, a corporation with a charter unforfeited, the debtor of plaintiff, whose ownership of property could not be divested to the prejudice of creditors on an arbitrary order without due process of law; and whereas the said John W. Watson, by wrongfully representing himself as a receiver and in possession of said attached and sequestered property as such of said Louisiana Printing and Publishing Co., Limited, on the pre-
278 tense of said void order of May 17th, 1893, obtained an order in that court directing the said marshal to release said property to said Watson, unless petitioner within five (5) days brought suit in the State court (this suit being a compliance with that order) for authority to prosecute that suit; and whereas petitioner's right to prosecute its said suit against its said debtor, an existing corporation, was and is by law and the constitution a well-established right, of which petitioner cannot be deprived without due process of law: Now, therefore, said judgment of the lower court is erroneous in sustaining said *ex parte* and void order of 17th May, 1893, and in refusing to declare the same to be null and void and as no obstacle to petitioner's further prosecution of said suit and as conferring no valid or actual authority to deprive petitioner's said debtor of its ownership and possession of its property, and to hinder, delay, or to defeat petitioner in the recovery of its just debt against its said debtor.

Second. The plaintiff having a constitutional and just cause of action against its said debtor, and, by reason of citizenship, a just right to bring its action in the said circuit court of the United States for the eastern district of Louisiana, of which said right to sue in said court petitioner availed itself, and having rightfully seized by attachment and sequestration the property of its said debtor subject to said seizure, the said lower court erred, the supreme court of Louisiana, against and in violation of the constitution and laws and the powers and duties of the officers of the United States, conferred by law, in maintaining said *ex parte* and absolutely null and void order of 17th May, 1893, against the vest*al* rights of petitioner to prosecute said suit in said court of the United States against its said debtor, as shown by said transcript of said circuit court of the United States on file in this case and made a part of the bill of exceptions.

279 Third. The said lower court, the supreme court of Louisiana, also erred in not reversing the ruling of the civil district court allowing the defendants to offer in evidence, in justification of their action, the document entitled "Division A, civil district court for the parish of Orleans; Frank Pope *vs.* The Louisiana Printing and Publishing Co., Limited; rule of Lyons *vs.* Norwood; filed September 14th, 1893; H. Messonnier, d'y clerk: and my decree thereon, dated September 19th, 1893; which said rule and decree, indorsed thereon in full, I have identified with this bill of exception by my signature."

Which said rule in said State court, identified as aforesaid, was

served on plaintiff's counsel and the said marshal of the United States having custody of the property seized, subject to petitioner's debt, charging them also with contempt of said State court on account of the detention of said property under said writs the 16th day of September, 1893. With said rule filed on the 14th day of September, 1893, which was taken by Thos. B. Lyons and D. J. Norwood, offered as aforesaid in justification by defendants, and were offered *with said* rule the answer of J. B. Donnelly, the marshal of the United States, and the answer of petitioner's attorney on behalf of petitioner, denying the jurisdiction of said State court, and plaintiff's bill of exception, filed October 12th, 1893, in said proceedings in the said rule of T. B. Lyons and D. J. Norwood, as well as the order of said State district court of 26th day of November, 1896.

And the said lower court and the supreme court of Louisiana erred in admitting said proceedings and orders taken and made and executed under said rule against J. B. Donnelly, the said United States marshal having custody of said property under the writs of said United States court, and petitioner, as a suitor in said
280 United States court, and depriving petitioner of its rights against its debtor, then and still being an existing corporation, on the ground that said proceedings before the lower court in all *its* particulars *was coram non judice;* which excess of jurisdiction assumed by the lower court and in the supreme court of Louisiana, in the language of the courts of the United States, is sometimes called an usurpation, and is utterly null and void and in no way binding on plaintiff, but, on the contrary, shows the unjustifiable damage done by the defendants to plaintiff in their unwarranted acts in attempting to prevent the prosecution of its right in said court.

Fourth assignment of errors.

The said lower court, the supreme court, on appeal also erred in receiving in evidence, against plaintiff's objections, as a defence in favor of defendants, any and all the proceedings of the defendants or any of them or others, under the said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, offered in this case on or after and subsequent to said 29th day of May, 1893, on the ground that the jurisdiction of the circuit court of the United States having rightfully attached in the said case of petitioner against its debtor, the Louisiana Printing and Publishing Co., Limited, at said date, the rights of plaintiff could not be defeated or ousted by any subsequent proceedings on the part of the defendants or any of them, nor could said plaintiff's debtor be deprived of its property to plaintiff's great damage without due process of law, and all of said proceedings in said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing and Publishing Co., Limited, No. 39100, set up as a defence are violations of amendment No. XIV of the — United States and null and void.

Fifth assignment of errors.

281 The lower court erred in its judgment and conclusions on the whole case and in rendering judgment against petitioner and in favor of defendants, except so far as dismissing the reconventional demand.

Wherefore the Remington Paper Co. prays that the judgment rendered in this case be annulled, avoided, and reversed, and that there be judgment annulling and avoiding the order appointing John W. Watson receiver and declaring the said order to be ineffectual as a bar to the attachment and sequestration or other proceedings on the part of The Remington Paper Company, plaintiff in error, and that John W. Watson and Frank H. Pope be condemned *in solido* or otherwise to pay your petitioner the sum of thirty-eight hundred and sixty-three and $\frac{55}{100}$ dollars ($3,863.55), damages caused petitioner in the United States circuit court for the eastern district of Louisiana, and that the marshal's seizure thereunder and the right of plaintiff in error to prosecute its suit against the Louisiana Printing and Publishing Company, Limited, in the courts of the United States be sustained, and for costs and such other and general relief as justice and the nature of the case may require.

Endorsement: No. 12287. Supreme court La. Remington Paper Company *vs.* John W. Watson *et al.* Assignment of errors. Filed July 9, 1897. (Signed) T. McC. Hyman, clerk.

Copy of Writ of Error.

Filed July 9, 1897.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana,
282 Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Remington Paper Company, a corporation of New York, plaintiff, and Frank H. Pope, John W. Watson, and The Louisiana Printing and Publishing Company, Limited, a corporation organized under and created by the laws of Louisiana, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question

the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Remington Paper Company, as by — complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme
283 Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the ninth day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana, the Chief Justice Being Absent from the State of Louisiana on Leave of Absence.

Endorsed: No. 12287. Supreme court of La. Remington Paper Co. *vs.* John W. Watson *et al.* Copy of writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 9th day of July, one thousand eight hundred and ninety-seven. Filed July 9, 1897. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

Filed July 29, 1897.

Know all men by these presents that we, The Remington Paper Company, as principal, — Edwin T. Merrick, as surety, are
284 held and firmly bound unto John W. Watson, Frank H. Pope, and The Louisiana Printing and Publishing Company, Limited, in the full and just sum of five hundred dollars, to be paid to the said John W. Watson, Frank H. Pope, and The Louisiana Printing and Publishing Co., Ltd., their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be

made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the supreme court of the State of Louisiana, holding sessions in and for the State of Louisiana, at New Orleans, in a suit depending in said supreme court, wherein The Remington Paper Company is plaintiff and John W. Watson, Frank H. Pope, and The Louisiana Printing and Publishing Co., Ltd., are defendants, judgment was rendered against The Remington Paper Company and in favor of the said defendants, and the said Remington Paper Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said John W. Watson, Frank H. Pope, and the Louisiana Printing and Publishing Co., Ltd., citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the granting of the writ of error:

Now, the condition of the above obligation is such that if the said Remington Paper Company shall prosecute its writ to effect and answer all damages and cost- if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE REMINGTON PAPER CO.,
By EDWIN T. MERRICK, *Att'y.* [L. S.]
EDWIN T. MERRICK. [L. S.]

Sealed and delivered in the presence of—

——— ———.

285 Approved, to operate as a supersedeas.

L. B. WATKINS,
Acting Chief Justice in the Place of the Chief Justice, who is Absent from the State of Louisiana on Leave.

UNITED STATES OF AMERICA, } ss:
State of Louisiana, }

Personally appeared Edwin T. Merrick, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) EDWIN T. MERRICK.

Subscribed and sworn before me this 15 day of July, 1897.

[SEAL.] (Signed) T. McC. HYMAN,
Clerk Supreme Court La.

Endorsed: No. 12287. Supreme court of Louisiana. Remington Paper Co. *vs.* John W. Watson *et als.* Bond for writ of error. Filed —— 29, 1897. (Signed) T. McC. Hyman, clerk.

286 *Agreement of Counsel as to Papers to be Copied in Transcript for Writ of Error.*

Filed July 29th, 1897.

Supreme Court of La.

REMINGTON PAPER COMPANY, Appellant,
vs.
JOHN W. WATSON ET AL., Appellees. } No. 12287.

A writ of error having been applied for, returnable to the Supreme Court of the United States, by The Remington Paper Company, plaintiff in error in said Supreme Court of the United States, it is understood between counsel in this case that the transcript shall consist of the record and the testimony of witnesses, and that all the documents brought up to the supreme court of Louisiana shall be copied into the transcript with the orders and indorsements thereon, and the clerk is instructed to copy into the transcript the citations and returns and the minute entries of the Louisiana Printing and Publishing Co., Limited, and directors and stockholders, but may omit the following:

Notes of evidence, but not notes in lieu of a bill.
Oath of appraisers.
Report of appraisers to fix the value of the property appraised.
Minute entry of submission, p. 9 of transcript.
Motion for commission, p. 19 of transcript.
Commission, pp. 19, 20, and 21.
Motion for commission, p. 26.
Index of stenographer, p. 36.
Index of stenographer, p. 61.
Index of stenographer, p. 69.
Motion for time to file brief on rehearing.

(Signed) HENRY L. GARLAND, JR.,
Att'y for Defendant in Error.

(Signed) ALBERT VOORHIES,
Att'y for Pl'ff in Error.

Endorsed: 12287. Supreme court of Louisiana. Remington Paper Co. *vs.* John W. Watson. Agreement of counsel as to documents to be copied in transcript for writ of error. Filed July 29th, 1897. (Signed) Paul E. Mortimer, dep. clerk.

287 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred

and eighty-seven pages contain a full, true, and complete copy of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The Remington Paper Company were plaintiffs and John W. Watson and others were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 12287.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this sixth day of August, anno Domini one thousand eight hundred and ninety-seven, and in the one hundred and twenty-second year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

288 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Lynn Boyd Watkins, senior associate justice and presiding justice of the supreme court of the State of Louisiana, do hereby certify that Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, is now absent from the State; that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate in the case of Remington Paper Co., appellant, *vs.* John W. Watson *et al.*, appellees, is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 6th day of August, A. D. 1897.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Presiding Justice.

289 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Remington Paper Company, a corporation of New York, plaintiff, and Frank H. Pope, John W. Watson, and The Louisiana Printing and Publishing Company, Limited, a corporation organized under and created by the laws of Louisiana, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the

ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
290 struction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Remington Paper Company, as by — complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the ninth day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
L. B. WATKINS,
Acting Chief Justice of the Supreme Court of the State of Louisiana, the Chief Justice Being Absent from the State of Louisiana on Leave of Absence.

291 [Endorsed:] No. 12287. Supreme court of La. Remington Paper Co. *versus* John W. Watson *et al.* Writ of error. Filed July 9, 1897. T. McC. Hyman, clerk.

292 Supreme Court of La.

REMINGTON PAPER COMPANY
vs.
JOHN W. WATSON ET AL. } No. 12287.

To the honorable the chief justice of the supreme court of the State of Louisiana:

And now comes the Remington Paper Co., of Watertown, New York, by Edwin T. Merrick and Albert Voorhies, as attorneys, and complains that in the record and proceedings, and also in the rendition of the judgment in a suit between The Remington Paper Co., plaintiff, and John W. Watson *et al.*, defendants, in the supreme court of the State of Louisiana—being the highest court of law and

equity of the said State in which a decision could be had in said suit—in which a final judgment was rendered against it on the 30th day of June, 1897, in said suit, wherein the plaintiff assigns as error, among other things, that whereas the said Remington Paper Co., the plaintiff, a citizen of the State of New York, did on the 29th day of May, 1893, institute an action at law in the circuit court of the United States for the eastern district of Louisiana for the recovery of a debt against the Louisiana Printing & Publishing Co., Limited, a corporation and a citizen of the State of Louisiana, on the law side of said circuit court, having jurisdiction of said case, to recover the sum of thirty-eight hundred and sixty-three and $\frac{55}{100}$ dollars ($3,863.55) *dollars*, due by said defendant, in that court, with interest, and said plaintiff—there having been legal and just grounds *frot* the same—obtained from said United States circuit court, on sufficient showing, with proof and bond, a writ of attachment and sequestration, which said writs were served on the said
293 Louisiana Printing & Publishing Co., Limited, by the marshal of the United States for said eastern district of Louisiana on the 29th day of May, 1893, and the property subject to said writs sufficient in value to pay and satisfy petitioner's debt was seized and taken into the custody of said marshal, an officer of said court of the United States, which said suit and its incidents in said circuit court of the United States, the same having jurisdiction thereof, is still pending against the said Louisiana Printing & Publishing Company, Limited; and whereas the said civil district court of the parish of Orleans, division A, did on the 17th day of May, 1893, in a proceeding without parties, affidavits, or proof, or bond, make an order in form—the same being, in fact, absolutely null and void and of no legal effect—wherein said John W. Watson was ostensibly appointed a so-called receiver to the said Louisiana Printing & Publishing Co., Limited, and said John W. Watson on the 18th day of May filed in the same court a supposed oath of office under said illegal and void *ex parte* order; and whereas said order of said district court was absolutely null and void as against third persons, and also as against the said Louisiana Printing & Publishing Co., Limited, a corporation with a charter unforfeited, the debtor of plaintiff, whose ownership of property could not be divested to the prejudice of creditors on an arbitrary order without due process of law; and whereas the said John W. Watson, by wrongfully representing himself as a receiver and in possession of said attached and sequestered property, as such, of said Louisiana Printing & Publishing Co., Limited, on the pretence of said void order of May 17th, 1893, obtained an order in that court directing the said marshal to release said property to said Watson unless petitioner within five (5) days brought suit in the State court (this suit being brought in compliance with that order) for *for* authority to prosecute
294 that suit; and whereas petitioner's right to prosecute its said suit against its said debtor, an existing corporation, was and is by law and the Constitution a well-established right, of which petitioner cannot be deprived without due process of law: Now, therefore, said judgment of the lower court is erroneous in sustain-

ing said *ex parte* and void order of 17th of May, 1893, and in refusing to declare the same to be null and void and as no obstacle to petitioner's further prosecution of said suit, and as conferring no valid or actual authority to deprive petitioner's said debtor of its ownership and possession of its property, and to hinder, delay, or to defeat petitioner in the recovery of its just debt against its said debtor.

Second. That the plaintiff, having a constitutional and just cause of action against its said debtor, and by reason of citizenship a just right to bring its action in the said circuit court of the United States for the eastern district of Louisiana, of which said right to sue in said court petitioner availed itself, and having rightfully seized by attachment and sequestration the property of its said debtor subject to said seizure, the said court erred against and in violation of the Constitution and laws and the powers and duties of the officers of the United States conferred by law in maintaining said *ex parte* and absolutely null and void order of 17th May, 1893, against the vested rights of petitioner to prosecute said suit in said court of the United States against its said debtor, as shown by said transcript of said circuit court of the United States on file in this case and made a part of the bill of exceptions.

That the said court erred in receiving in evidence, against plaintiff's objections, as a defence in favor of defendants, any and all the proceedings of the defendants or any of them or others under
295 the said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing & Publishing Co., Limited, No. 39100, offered in this case on or after and subsequent to said 29th day of May, 1893, on the ground that the jurisdiction of the circuit court of the United States having rightfully attached in the said case of petitioner against its debtor, the Louisiana Printing & Publishing Co., Limited, at said date, the rights of plaintiff could not be defeated or ousted by any subsequent proceedings on the part of the defendants or any of them, nor could said plaintiff's debtor be deprived of its property, to plaintiff's great damage, without due process of law, and all of said proceedings in said *ex parte* proceedings entitled Frank H. Pope *vs.* The Louisiana Printing & Publishing Co., Limited, No. 39100, set up as a defence, are violations of the fourteenth amendment of the United States and are null and void.

All of which appears in the record and proceedings in said suit. Manifest error hath happened, to the great damage of the said Remington Paper Company.

Wherefore it prays for the allowance of a writ of error and such other process as may cause the same to be correct- by the Supreme Court of the United States.

ALBERT VOORHIES, *Att'y.*
EDWIN T. MERRICK, *Att'y.*

Allowed.

L. B. WATKINS,
Acting Chief Justice of the Supreme Court of Louisiana, the Chief Justice being Absent from the State of Louisiana on Leave of Absence.

296 NEW ORLEANS, LA., *Aug.* 6, 1897.

On behalf of the several defendants in error, I take notice of the foregoing petition and order for writ of error and waive service of citation in error.

HENRY L. GARLAND, JR.,
Att'y for Defendants in Error.

296½ [Endorsed:] No. 12287. Supreme court La. Remington Paper Company *v.* John W. Watson *et al.* Petition for writ of error and order. Edwin T. Merrick, attorney & counsellor at law, 220 Carondelet street, New Orleans, La. Filed July 9, 1897. T. McC. Hyman, clerk.

Endorsed on cover: Case No. 16,645. Louisiana supreme court. Term No., 146. The Remington Paper Company, plaintiff in error, *vs.* John W. Watson, Frank H. Pope, and The Louisiana Printing & Publishing Company, Limited. Filed August 13th, 1897.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1898.

No. 146.

REMINGTON PAPER COMPANY, *Plaintiff in Error.*

versus

JOHN W. WATSON, FRANK H. POPE AND THE LOUISIANA PRINTING AND PUBLISHING COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief of Remington Paper Company, Plaintiff in Error.

On May 29, 1893, the Remington Paper Company brought suit in the United States Circuit Court for the Eastern District of Louisiana, against the Louisiana Printing and Publishing Company for thirty-eight hundred and sixty-three 55-100 dollars

($3,863.55), and seized under writs of attachment and sequestration property sufficient to satisfy the said writs. (Rec. 115 and 119.)

On May 30, 1893, John W. Watson, falsely claiming to have been appointed receiver on May 17, 1893, by the Civil District Court for the Parish of Orleans, in the proceedings entitled *In re* Frank H. Pope vs. Louisiana Printing and Publishing Company, Limited, No. 3900 of the docket of said court, and suggesting that he had been in possession of the property seized under such appointment since May 17, 1893, moved the court on said alleged appointment, to release and set aside the seizures. (Rec. 124.)

The Remington Paper Company, plaintiff in error, filed an exception to the motion or rule:

That said Watson as a pretended receiver can not interfere in the progress of this suit in the informal and summary manner attempted, and had no right to demand by the judgment of the court anything, without coming into court in the manner prescribed by law, and in the event the exception was overruled, but not otherwise, to answer, denied the allegations made in the motion or rule and denied that John W. Watson, the pretended receiver, had any legal right or authority under the *ex parte* proceedings on which he relies to take possession of property attached or hinder or delay your petitioner from collecting its just debt against the Louisiana Printing and Publishing Company, Limited (Rec. 125).

The rule or motion to dismiss the attachment and sequestration was tried and submitted both on the exception and the answer on June 10, 1893. And on the trial it was shown that John W. Watson on an *ex parte* application of one Frank H. Pope filed in the State court May 17, 1893, had been appointed receiver without *citation of the corporation or any one interested* (Rec. 127).

That the court in the order May 17, 1893, appointing Watson grants it "considering the foregoing petition and particularly the *intervention of the State of Louisiana by her Attorney General* and of the creditors mentioned" (Rec. 127), when in truth and fact the intervention of the attorney general was not filed till the next day, or the 18th day of May, 1893. (Rec. 130.) In the or-

der the court said: "Let said John W. Watson take the proper legal oath and otherwise properly qualify."

It was only on June 6, 1893, that Watson applied to the court to have the amount of his bond fixed, a week after the attachment or sequestration of plaintiff in error had been executed.

No proof or evidence was offered. (Rec. 155.) That said *ex parte* order of this court dated the 17th day of May, 1893, purporting to appoint John W. Watson receiver of the Louisiana Printing and Publishing Company, Limited, was obtained in violation of the fifth and fourteenth amendments to the constitution of the United States in this, that said decree was obtained without due process of law, it being *ex parte* and without affidavits, bond or proof, as more at large and fully alleged in the original petition, and the said unconstitutional and void order and decree is set up and alleged by the defendants as a bar and a defence to prevent your petitioner from recovering and having its just and valid debt from its debtor, the Louisiana Printing and Publishing Company, Limited, and thus depriving petitioner of its claim duly secured by due and legal process of law on property of its said debtor and seized under said writs from said Circuit Court of the United States, and said defendants seek through said void *ex parte* order of 17th of May, 1893, to effect the transfer and of the possession and property of said Louisiana Printing and Publishing Company under seizure of petitioner under its writs to said John W. Watson, thereby screening the same from ordinary and legal pursuit of creditors in the modes pointed out by law, in violation of the fifth and said fourteenth amendments of the Constitution of the United States (Rec. 10 and 11).

The following order was rendered on Tuesday, June 6, 1893:

This cause having been heard "and submitted upon a rule taken by J. W. Watson, appointed receiver of the defendant by the Civil District Court for the Parish of Orleans, to set aside the writs of attachment and sequestration issued in this cause, and upon the exception thereto filed by the plaintiff, and same having been considered by the court, it is now ordered, for the reasons assigned in the written opinion on file, that the marshal restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, re-

ceiver, unless *within five days* the plaintiff applies for and ultimately receives authority from the Civil District Court which appointed Watson or from the appellate court to hold same under the writs" (Rec. 140).

The plaintiff, the Remington Paper Company, desiring to sustain its attachment and sequestration on June 9, 1893, in the receivership proceedings and in an action against John W. Watson and Frank H. Pope in solido, applied to the Civil District Court for authority to hold the property under its said writs (Rec. 1, 2, 3 and 4) and by amendment to the petition filed May 24, 1894, averring (pp. 10, 11)—

This application was met by the following exceptions filed by John W. Watson calling himself receiver—

1. That said petition disclosed no cause of action.

2. That said action is premature, even if it could be maintained at all, which is denied.

3. That proper and necessary parties have not been made hereto.

4. That the question of the validity of the attachment and sequestration sued out in the Federal court is either settled by the decision of the United States Circuit Court adverse to the pretensions of the Remington Paper Company in a litigation between this receiver and said Remington Paper Company—involving the validity of the seizure thereunder, and if so, said decision is now *res judicata* upon the question of said attachment and sequestration."

"And in the alternative exception (*sic*) says that if said ruling is not *res judicata* upon the validity *vel non* of said attachment and sequestration are still pending and undetermined between said Remington Paper Company—your exceptor, in court of concurrent jurisdiction, and in that event exceptor pleads the plea of *lis pendens* and prays that all the foregoing exceptions be sustained, and the action herein of the Remington Paper Company be dismissed at its costs." (Rec. 4.)

The exceptions filed by Frank H. Pope are substantially the same save that the plea of *lis pendens* is omitted. (Rec. 5.)

The exception of John W. Watson *individually* is practically the same as that of John W .Watson, receiver, except that the plea of want of proper parties is made last of all. (Rec. 5 and 6.)

•the absolute illegality and nullity of the so-called appointment of J. W. Watson, receiver, and praying for judgment against him for thirty-eight hundred and sixty-three dollars ($3863) damages, and asking that his appointment be declared null and of no effect against plaintiff in error. The petition will be found at pages 1, 2, 3 and 4 of record, and the amendment thereto at pages 10 and 11.

A glance at the prayer of plaintiff's petition will show that Watson *was never sued as the receiver of the defendant company* (Rec. 3 and 4).

Watson next files an answer denying all and singular the allegations of the petition of the Remington Paper Company.

He *admits* that he was duly appointed receiver of the defendant company, avers the validity of the appointment, denies the charge of fraud, collusion and conspiracy in the matter of his appointment or that he has any knowledge or even suspicion of any improper acts of any officers of defendant company and expresses confidence in them and in their motives and reconvenes for $3,847.15 damages to the *defendant company.*

He also prays that his appointment be *notified* (ratified) and confirmed. (Rec. 9 and 10.)

To this reconvention is filed by the Remington Paper Company the following exceptions:

"The said Remington Paper Company comes by Merrick & Merrick, its attorneys, on whom service of process has been made in said suit against it and said Lyons and for exception says:

That it denies especially that said John W. Watson has been appointed in a legal manner and in any suit with the proper parties, a receiver of said Louisiana Printing and Publishing Company with power to stand in judgment, to prosecute suits on behalf of said company; seeking to recover its debts against said Louisiana Printing and Publishing Company, and having instituted a suit with demands in sequestration and attachment levied say 29th day of May, 1893, being No. 12,167 in the Circuit Court of the United States for the Eastern District of Louisiana, on a debt of $3,863 55 against said last mentioned company and alleges that said Watson under his said pretended title of receiver has at various times, say on the 30th day of May, June 1, June 20 of present year, and at other times intruded himself into said suit on simple motions and endeavored under cover of his said pretended capacity of receiver to procure and take from the United States marshal the goods sequestrated and attached and held by this exceptor's sequestration and attachment at his great cost, and otherwise to hinder this exception (exceptor) in the prosecution of its just demand against said Louisiana Printing and Publishing Company.

And this defendant denies that said pretended stockholders ever conferred on said Watson the capacity and power he has alleged in his said petition to represent said corporation; and denies that a meeting of the stockholders of said corporation was ever convened in a corporate meeting in accordance with the eighth article of the charter of said company and especially denies that said stockholders have conferred or could have conferred any capacity on said Watson to stand in judgment for said company."

"Wherefore this defendant prays that this exception be maintained and that said Watson be declared to be without said alleged capacity to prosecute this suit and further to continue vexing this defendant in the collection of his debt against said Louisiana Printing and Publishing Company, Limited, under the pretence that he is receiver of said company and that he be decreed to pay the costs."

"*Second.* And in the event the foregoing exception to the pretended capacity of said Watson be overruled, and not otherwise, this exception (exceptor) further excepts and says that the said petition against said Remington Paper Company and (Thomas B. Lyons) discloses no cause of action against this defendant." (Rec. 7 and 8.)

These exceptions filed to the reconventional demand were considered on a trial of the merits—

The Remington Paper Company having made the required application so far as was possible, the property attached and sequestered remained in the hands of the United States marshal.

But on September 14, 1893, a rule was taken in the so-called receivership proceeding in the Civil District Court by one Thos. B. Lyons, claiming to be owner of the premises in which the property of the Louisiana Printing and Publishing Company, Limited, was situated, and one D. J. Norwood, claiming to be lessee of said property for the year commencing September 30, 1893.

The rule suggested that the said property was lawfully in the possession of John W. Watson, receiver; that Watson had been placed in legal possession by orders of the Court; that in contempt and disregard of the authority of the court the Remington Paper Company, represented by Merrick & Merrick, sued out an attachment and caused the United States marshal to seize the

property in the hands of an officer of the State court; that the Federal judge had dissolved the attachment and the plaintiffs had not appealed nor taken a writ of error *nor applied to the State court to permit the attachment to hold.*

That movers were entitled to their rent and possession and would be damaged in the sum of $600 by not getting possession in order to lease for the ensuing year.

The rule then ordered the United States marshal and plaintiff, the Remington Paper Company, to show cause why they should not cease and desist from in any way interfering with Watson (calling himself receiver) in the possession and enjoyment of the property seized, and be punished for contempt of the authority of this court and said Watson be protected in his possession.

Watson was also ordered to show why the rent due Lyons should not be paid—(Rec. 157, 158).

To this rule the Remington Paper Company excepted on the ground that the State court was without authority to interfere with them for the reason that they hold the property under a writ of attachment issued from United States Circuit Court and that the proceedings should have been taken in United States Circuit Court. (Rec. 162.)

For answer to rule the Remington Paper Company filed a general denial, but specially admitted having the property under seizure under a valid writ of attachment from the United States Circuit Court in suit No. 12,197 of the docket of that court and entitled Remington Paper Company vs. Louisiana Printing and Publishing Company, Limited. The Remington Paper Company denied also that the writ of attachment had ever been dissolved or set aside (Rec. 162).

The State court then rendered the following order:

"It is therefore ordered, adjudged and decreed that so far as this is a rule for contempt is concerned, it not appearing that the marshal was officially notified of the proceedings here, the question of contempt is reserved.

It is further ordered that the possession of the receiver, John W. Watson, be maintained and J. B. Donally, United States marshal, and the Remington Paper Company do cease and desist from all interference with John W. Watson, the receiver, in the posses-

sion of the property of the Louisiana Printing and Publishing Company and especially of the printing presses, type, etc., and contents of the houses 41 and 43 Natchez street; and it is further ordered that John W. Watson, receiver, be instructed to proceed with his duties and the rule be so far made absolute as to order the receiver to sell the property contained in the buildings Nos. 41 and 43 Natchez street after thirty days' advertisement, and the receiver will be authorized on the filing of his account to pay the rent on the two buildings, Nos. 41 and 43 Natchez street, for the month of October, 1893, and the rights of the Remington Paper Company and of the lessors as well as all the other creditors are reserved and referred to the proceeds, and in other respects the ruling of the court is reserved. (Rec. 159.)

A bill of exceptions was taken to the ruling of the court on the ground that the attachment and sequestration issued from the United States court legally issued under the Constitution and laws of the United States—

That said writs had never been set aside, although the said Circuit Court had rendered an order that the marshal restore the property attached and sequestered to John W. Watson, receiver, "unless within five days the Remington Paper Company applies for and ultimately receives authority from the Civil District Court which appointed Watson, or from the *appellate court*, to hold same under said writs;" the said Remington Paper Company *had made application to said Civil District Court* which had been denied, but said judgment had not become final and a motion of appeal had been taken therefrom" * * * (Rec. 98).

An appeal was applied for from the order of the State court upon the marshal to release, but this appeal was denied and the Supreme Court affirmed the position of the trial judge. 45 An. 1418, State ex rel. Remington Paper Company vs. Watson. The exception of no cause of action filed by Watson had been sustained.

An appeal was taken from the judgment sustaining the exception of no cause of action and the Supreme Court of Louisiana in Paper Company vs. Watson, 46 An. 793, reversed the judgment of the trial judge and remanded the case for trial.

On the trial of the case plaintiff offered in evidence testimony

taken under commission to prove its claim and the proceedings in the United States court; and for the purpose of showing their nullity and invalidity also offered the illegal petition for a receiver, said petition *being unaccompanied by affidavits or any other proof, or parties defendant, or prayer for citation;* and for the same purpose the order of court; also the paper purporting to be an intervention of the State; the petition of Watson filed June 6, 1893, praying the court to fix the bond of the *soi disant* receiver and the order of court thereon; and afterward on the trial of this case the defendants offered to give in evidence two documents purporting to be the signature of certain stockholders of said company to a consent that Watson be confirmed as receiver.

But plaintiff claiming that its rights were fixed by the due and legal institution of its said suit according to the due process of law in the United States court on May 29, and the writs therein issued and served, and that defendants could not by any acts on their part subsequent to said seizure deprive plaintiff of its rights as a suitor in the United States court nor substitute any other person in the place of plaintiff's debtor; nor cure the nullities arising from defendants, purely *ex parte* proceeding without any of the forms of Louisiana law or due process of law.

And that plaintiff being invested by the Constitution and laws of the United States in and by virtue of its just demand and lawful proceedings against said Louisiana Printing and Publishing Company, Limited, in the courts of the said United States, could not be deprived of its rights by said illegal action nor by the subsequent attempt of defendant to cure the fatal defect of the purely *ex parte* proceedings filed May 17 and May 18, 1893, objected to the evidence.

The trial judge, however, admitted the evidence, and a bill of exceptions was taken, prepared and allowed.

Other bills of exceptions were taken to the rulings of the State court and the United States court which will be noticed hereafter.

Assignments of Errors.

First.—That whereas the said Remington Paper Company, the plaintiff in error, a citizen of the State of New York, did, on

the 29th day of May, 1893, institute an action at law in the Circuit Court of the United States for the Eastern District of Louisiana for the recovery of a debt against the Louisiana Printing and Publishing Company, Limited, a corporation and a citizen of the State of Louisiana, on law side of said Circuit Court, having jurisdiction over said case, to recover the sum of thirty-eight hundred and sixty-three and 55-100 dollars ($3,863 55) due by said defendants in that court, with interest, and said plaintiff, there having been legal and just grounds for the same, obtained from said United States Circuit Court, on sufficient showing with proof and bond, a writ of attachment and sequestration, which said writs were served on said Louisiana Printing and Publishing Company, Limited, by the marshal of the United States for said Eastern District of Louisiana, on the 29th day of May, 1893, and the property subject to said writs, sufficient in value to pay and satisfy petitioner's debt, was seized and taken into the custody of said marshal, an officer of said court of the United States, which said suit and its incidents in said Circuit Court of the United States, the same having jurisdiction thereof, is still pending against the said Louisiana Printing and Publishing Company, Limited, and whereas the said Civil District Court of the Parish of Orleans, Division A, did, on the 17th day of May, 1893, in a proceeding without parties, affidavits, or proof or bond, make an order in form, the same being in fact absolutely null and void and of no legal effect, wherein said John W. Watson was ostensibly appointed a so-called receiver to the said Louisiana Printing and Publishing Company, Limited, and said John W. Watson, on the 18th day of May, filed in the same court a supposed oath of office under said illegal and void *ex parte* order; and whereas said order of said District Court was absolutely null and void as against third persons, and also as against the said Louisiana Printing and Publishing Company, Limited, a corporation with a charter unforfeited, the debtor of plaintiff, whose ownership of property could not be divested to the prejudice of creditors on an arbitrary order without due process of law; and whereas the said John W. Watson, by wrongfully representing himself as a receiver and in possession of said attached and sequestered property ~~as such~~ of said Louisiana Printing and Publishing Company, Limited, on the pretence of said void

order of May 17, 1893, obtained an order in that court directing the said marshal to release said property to said Watson, unless petitioner within five (5) days brought suit in the State court (this suit being a compliance with that order) for authority to prosecute that suit; and whereas petitioner's right to prosecute its said suit against its said debtor, an existing corporation, was and is by law and the constitution a well-established right, of which petitioner can not be deprived without due process of law: Now, therefore, said judgment of the lower court is erroneous in sustaining said *ex parte* and void order of 17th May, 1893, and in refusing to declare the same null and void and as no obstacle to petitioner's further prosecution of said suit and as conferring no valid or actual authority to deprive petitioner's said debtor of its ownership and possession of its property, and to hinder, delay, or to defeat petitioner in the recovery of its just debt against its said debtor.

Second.—The plaintiff having a constitutional and just cause of action against its said debtor, and, by reason of citizenship, a just right to bring its action in the said Circuit Court of the United States for the Eastern District of Louisiana, of which said right to sue in said court petitioner availed itself, and having rightfully seized by attachment and sequestration the property of its said debtor subject to said seizure, the said lower court erred, the Supreme Court of Louisiana, against and in violation of the constitution and laws and the powers and duties of the officers of the United States, conferred by law, in maintaining said *ex parte* and absolutely null and void order of 17th May, 1893, against the vested rights of petitioner to prosecute said suit in said court of the United States against its said debtor, as shown by said transcript of said Circuit Court of the United States on file in this case and made a part of the bill of exceptions.

Third.—The said lower court, the Supreme Court of Louisiana, also erred in not reversing the ruling of the Civil District Court allowing the defendants to offer in evidence, in justification of their action, the document entitled "Division A, Civil District Court for the Parish of Orleans; Frank Pope vs. The Louisiana Printing and Publishing Company, Limited; rule of Lyons vs. Norwood, filed September 14, 1893, H. Messonnier, deputy clerk;

any the decree thereon in full is identified with this bill of exception by my signature."

Which said rule in said State court, identified as aforesaid, was served on plaintiff's counsel and the said marshal of the United States having custody of the property seized, subject to petitioner's debt, charging them also with contempt of said State court on account of the detention of said property under said writs the 16th day of September, 1893. With said rule filed on the 14th day of September, 1893, which was taken by Thos. B. Lyons and D. J. Norwood, offered as aforesaid in justification by defendants, and were offered with said rule the answer of J. B. Donnelly, the marshal of the United States, and the answer of petitioner's attorney on behalf of petitioner, denying the jurisdiction of said State court, and plaintiff's bill of exception, filed October 12, 1893, in said proceedings in the said rule of T. B. Lyons and D. J. Norwood, as well as the order of said State District Court of 26th day of November, 1896.

And the said lower court and the Supreme Court of Louisiana erred in admitting said proceedings and orders taken and made and executed under said rule against J. B. Donnelly, the said United States marshal having custody of said property under the writs of said United States court, and petitioner, as a suitor in said United States court, and depriving petitioner of its rights against its debtor, then and still being an existing corporation, on the ground that said proceedings before the lower court in all its particulars was *coram non judice;* which excess of jurisdiction assumed by the lower court and in the Supreme Court of Louisiana, in the language of the courts of the United States, is sometimes called usurpation, and is utterly null and void and in no way binding on plaintiff, but, on the contrary, shows the unjustifiable damage done by the defendants to plaintiff in their unwarranted acts in attempting to prevent the prosecution of its right in said court.

Fourth Assignment of Errors.—The said lower court, the Supreme Court, on appeal also erred in receiving in evidence, against plaintiff's objections, as a defence in favor of defendants, any and all the proceedings of the defendants or any of them or others, under the said *ex parte* proceedings entitled Frank H. Pope vs. The Louisiana Printing and Publishing Company, Limited,

No. 39,100, offered in this case on or after and subsequent to said 29th day of May, 1893, on the ground that the jurisdiction of the Circuit Court of the United States having rightfully attached in the said case of petitioner against its debtor, the Louisiana Printing and Publishing Company, Limited, at said date, the rights of plaintiff could not be defeated or ousted by any subsequent proceedings on the part of defendants or any of them, nor could said plaintiff's debtor be deprived of its property to plaintiff's great damage without due process of law, and all of said proceedings in said *ex parte* proceeding entitled Frank H. Pope vs. The Louisiana Printing and Publishing Company, Limited, No. 39,100, set up as a defence, are violations of amendment No. XIV of the United States and null and void.

Fifth Assignment of Errors.—The lower court erred in its judgment and conclusions on the whole case and in rendering judgment against petitioner and in favor of defendants, except so far as dismissing the reconventional demand.

Points of Law or Fact.

At the time the Remington Paper Company sued out its writs of attachment and sequestration in the Circuit Court of the United States against the Louisiana Printing and Publishing Company, Limited, there was no legal obstacle to those proceedings for the following reasons:

First. That at date of petitioner's said seizures on the 29th day of May, 1893, said Watson had not given bond, nor complied with any order of court in the *ex parte* proceedings, nor had any such proceedings been had as to perfect said order, or to give said Watson any right to control the property of defendant or to prevent any suit from being brought or any court from subjecting the property of said defendant by due process of law to the payment of debts, and the conduct of Pope and Watson and those confederating with them in attempting to screen the property from petitioner was collusive and a constructive fraud upon petitioner and a violation of its rights under the laws and Constitution of the United States.

Second.—That the said order of 17th of May was absolutely

null and void as against petitioner and the creditors of the defendant corporation and conferred no authority on said Watson for the reason the same was made upon the collusive petition of Frank H. Pope, without citation to any one, without oath or affidavit or any proof, or *contestatio litis*, and said inchoate and pretended order was obtained the same day on said *ex parte* and collusive petition.

Third.—That the officers of the defendant corporation were incapable in law of withdrawing from their offices so as to delay or hinder its creditors in the pursuit of their rights, and that said corporation does not cease to exist until regular proceedings have been taken against its numerous officers and stockholders.

Fourth.—That the attempt to bolster up the illegal, *ex parte* proceedings by so-called intervention on the part of the Attorney General will not cure the nullity of said *ex parte* proceedings of said Pope and Watson, and, moreover, said so-called intervention is without affirmative allegations, and simply recites what said Pope says, and that the State is without right to intrude itself in this manner into the controversy of private persons and demand forfeitures in any other manner than the mode prescribed by law; that said Attorney General was without authority to join said Pope in his *ex parte* petition without due process of law and pray for the appointment of a receiver.

Petitioner shows that no citation was issued until 27th May, 1893, to any one, and none prayed for, and no return was made until service had been made of the writs of sequestration and attachment.

The order of the judge of the State court was just as much a nullity as if he had rendered in his office a judgment against any other citizen *without a citation—or summons.*

There are no chancery powers vested in the State courts of Louisiana and perhaps that is the reason that they impute such extensive powers to themselves when overstepping their own jurisdiction—e. g., the power to dispose of the property and rights of a corporation without having *the res or defendant brought into court by any manner of process whatever.*

Your Honors have said:

"A sentence of a court pronounced against a party without a hearing or giving him an opportunity to be heard is not a judicial

determination of his rights and is not entitled to respect in any other tribunal." Windsor vs. McVeagh, 93 U. S. 474. See also Smith vs. Reid, 134 N. Y. 568.

In Gluck and Becker on Receivers, p. 5, the principle is stated thus:

"It is a condition precedent—a jurisdictional essential—to the exercise of the appointive power that a cause be pending and that the *corporation over which it is proposed to extend the receivership be a party thereto.*" (Our italics.)

32 Ill. 79, Baker vs. Backus.

30 Ia. 148, French vs. Gifford.

49 Pa. 310, Granestine's Appeal.

31 Ala. 41, Labauve vs. Slack.

" It is well established that courts *have no jurisdiction* to ap-
" point receivers for corporations in the absence of express statu-
" tory authority. High on Receivers, Secs. 287, 288, 292, 307 and
" 749, and authorities there cited, French vs. Gifford, 30 Iowa, 158;
" Hedges vs. Pacquet, 3 Oregon, 77.

" To this doctrine in its broadest statement there may be some
" exceptions, confined, however, to cases of *extreme necessity, such*
" *as when* corporate property is abandoned or where there are
" no persons to take charge of or conduct its affairs."

" No other exception has ever been hinted at even in any *dic-*
" *tum* of this court. Stark vs. Burke, 5 An. 740; N. O. Gas Light
" Co. vs. Bennett, 6 An. 456; Brown vs. Union, 3 An. 182."

Baker vs. Louisiana Portable Railroad Co., 34 An. 757.

Again: " No principle of law is better settled than that
" courts have no power to appoint a *receiver ex parte* without no-
" tice or hearing of the party in interest and unless a basis for ap-
" pointment is alleged and proved. High on Receivers, Secs. 17,
" 111, 115; Frazier vs. Wilson, 4 Rob. 517; Martin vs. Blanchin,
" 10 An. 237; Mallady vs. Mallady, 26 An. 438. *The power of*
" *courts in Louisiana is exceptional and limited.*"

" Baker vs. Portable Company, 34 An. 754; 43 An. 832, State ex rel. vs. Brittin et al."

Acting on your Honor's statement that an order appointing a receiver by *request of a small creditor* and *without evidence* and without citing the corporation to be placed in the hands of the re-

ceiver or "giving it an opportunity to be heard" is "not a judicial determination of his rights and is *not entitled to respect in any other tribunal*" (93 U. S. 474, Windsor vs. McVeagh) the plaintiff disregarded the so-called appointment and proceeded in the United States Circuit Court to recover his legal rights—and well could he have done so under the decisions of this court, but that Judge Billings was anxious to show all comity that might be demanded by the Federal jurisprudence where there may be a possibility of conflict between the Federal and State courts, and went further than reason and justice required to render the order:

"That the marshal restore the property seized in this cause "under the writs of attachment and sequestration to John W. "Watson, receiver, unless within five days the plaintiff applies for "and ultimately receives authority from the Civil District Court "which appointed Watson or from the appellate court, to hold "same under said writs."

Judge Billings' reasons for rendering this order were that comity required the court which made the *irregular appointment to correct it.* (Rec. 139.)

He failed to distinguish between an irregular order and one which was an absolute nullity for want of process, parties, *or evidence.*

However, we have complied with Judge Billings' order and have made application to the State court to sustain the attachment, and this suit now coming up from the *State court itself the question of comity does not enter further into the argument,* but the question of our constitutional and legal rights to sustain an attachment and sequestration properly sued out before a court of competent jurisdiction as against the most glaringly null,void, and un-American order it has been our misfortune to witness, is the matter for your Honors to decide.

The suit brought in the State court was brought in the form of an action of nullity of the *ex parte* order and conformed to the decree of the Circuit Court.

The action is given by law, C. P. 604: "One may demand the nullity of a judgment for any of the causes provided in this section, even if no appeal have been taken from the same, or if the delay for taking the same have expired."

C. P. 612: "The nullity of a judgment rendered against a party without his having been cited, or by an incompetent judge, even if all the formalities of the law have been observed, may be demanded at any time, unless the defendant were present in the parish and yet suffered the judgment to be executed against his property without opposing the same." * * * Article 607 of C. P. is only illustrative of grounds. (42 An. 607.) The case of Jack vs. Harrison, 34 An. 736, 740, shows the power of the court to "brush the obstacle interposed out of his way."

See also Brusiere vs. Williams, 37 An. 388; Clark vs. Christine et al., 12 L. 396.

See case of Morris vs. Cain's Executor, 34 An. 665, as to right to clear obstructions to a sale.

Baylie vs. Baylie, 37 An. 529; Merrick vs. McCausland, 24 An. 256.

The action of nullity is the appropriate action for third parties. There is therefore no ground to liken this case to a case of malicious prosecution, nor to a simple revocatory action. Nor is it a simple revocatory action. The party who has a privilege or mortgage is not bound to surrender his rights on the property he has seized.

The action of the plaintiff in error was met in the State court by exceptions and among them the exception that the petition of plaintiff in error disclosed no cause of action.

This exception was sustained by the lower court, but upon appeal the State Supreme Court reversed the judgment and remanded the case. In their opinion on the trial of the exception the State Supreme Court say:

"It is not readily perceived on what theory the defendant's plea of no cause of action rests, or on what thereon the judge *a quo* maintained said exception and dismissed the plaintiff's suit.

"It is correct that this writ has for object the removal of the receiver, so as to leave the course of proceedings in the United States Circuit Court untrammeled and free; and if, in point of law and fact, his petition be taken as true, he is undoubtedly entitled to judgment."

There is no question that the allegations of the petition of the Remington Paper Company were sustained in so far as proof

of the service of the writs of the plaintiff on the defendant corporation before any citation or other process had issued from the State Court; that the *soi disant* receiver was appointed without evidence, without even an *ex parte* affidavit; the order issued was conditioned upon Watson's giving bond, which he did not give until June 10, 1893, long after the attachments and sequestrations were served and the day after our application to the State Court to mantain said writs.

Therefore this case presents the important point, whether a citizen of the United States can be deprived of its security for the payment of its debts without due process of law, by depriving its debtor of its property and stripping it of property without due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

There is no question of comity in it, as our application may be now considered as to the State Court, but there are authorities to show that the Court whose *process first issued* is the one entitled to try the case.

"Priority of jurisdiction depends not upon the date of the "commencement of the suit or filing of the bill, but is determined "by the service of process."

Gluck & Becker, p. 99.

"Priority of jurisdiction as between the State and the "United States Courts is determined by the service of process, and "not by the date of the commencement of the suit."

I Bissel 260, Bell vs. Ohio Life and Trust Co. This case is stated as follows:

"On the 16th of October, 1858, Bell & Grant filed in the "clerk's office of this Court a bill against the Ohio Life and Trust "Company, their assignees and others, upon which a subpœna "was issued and served the same day upon five of the members of "the company.

"On the 18th, at 10 o'clock A. M., upon notice to the defend- "ants, who appeared in person and by their solicitors, the judges "of this Court made an order appointing a receiver of the Trust "Company, and enjoining the assignees from disposing of the "assets, and ordering them to hold the assets subject to the further "order of the Court.

"These assets, consisting of notes, bonds, stock certificates, "etc., were at the time in the actual possession of the assignees of "the Ohio Life and Trust Company, and they had deposits with "certain bankers in Cincinnati on current account.

"On the same morning, but subsequent in time, in the pres- "ence of the parties, one of the judges of the Superior Court in "Cincinnati made an order in a case then pending in that Court, "in which Spinning & Brown were plaintiffs and the assignees of "the Trust Company defendants, appointing the sheriff of Hamil- "ton county receiver, and requiring the assignees to deliver the "assets to him.

"This case had been commenced on the *14th of October* by "filing a petition, and a *summons had been issued on the same "day* in accordance with the Code of the State, *but had not been "served.*"

"The sheriff, *without giving bond* or *taking an oath*, imme- "diately proceeded as such receiver to demand of the assignees "the possession of the assets, and they were delivered to him by "one of the assignees who had personal notice of the order made "in this Court. The receiver appointed by this Court made due "demand of the sheriff for the delivery to him of the assets of "the company, at the same time exhibiting to him his authority as "receiver under the order of the Court. Delivery was refused by "the sheriff, he claiming to hold the assets as receiver under an "order of the Supreme Court of Cincinnati."

"Rule against the sheriff to show cause why he should not "be attached for contempt."

The Court held that, inasmuch as under the laws of Ohio actions were commenced by petition and summons, and as the *process of the United States Court was served first*, that Court took priority of jurisdiction over the State Court, though the State Court suit had been *first* commenced.

On page 260 Judge McLean says:

"An action, like every other thing, must have a beginning. The filing of the petition is one thing, the præcipe another, and the issuing of the summons another, and the service and return another; all these are in the Code. They belong to the same class. In the order of time they succeed each other and are essential to

give jurisdiction over the parties and the subject matter of the controversy." (1 Bissell 266. *Vide quoque* 6 F. 443, Union Life vs. University of Chicago.)

This case is also reported 10 Bissell 191. The first paragraph of the syllabus of the case as reported by Mr. Bissell is as follows:

"A bill was filed in the State Court to enjoin the foreclosure "of a mortgage and to have it set aside and declared void. Later "but on same day, a bill was filed in the United States Circuit "Court to foreclose the mortgage. The process from the United "States Circuit Court was first served. *Held:* That the fact that "the process of the United States Court was first served gave that "Court jurisdiction to go on with the foreclosure suit and deter-"mine all questions as to the validity of the mortgage."

See 28 C. C. A. 537, Hughes vs. Greene.

We contend that the Remington Company, being strictly within the constitutional amendment and using the due and well-known process of law on the statute books of Louisiana, had an undoubted constitutional right to bring into Court *its own* debtor and demand and obtain judgment, enforcing its own privileges against it, and not against some other person, who may be wholly without right and perhaps irresponsible. *In this instance such person is outside any known process of law*, and without authority to stand in judgment for our debt.

The error of the lower Court was in supposing that it had the equivalent of chancery jurisdiction, and that chancery would have allowed an *ex parte* order, taking a debtor's property away from him by a fiat of the judge *ex parte* and administering it itself and by a person not known nor qualified as a Louisiana officer.

Chancery never assumed such *jurisdiction*, but required a suit and return *nulla bona*, as our law does. Sec. 688, R. S., reads as follows: "They shall forfeit their charter for insolvency *evidenced by a return of no property found on execution;* and in such case it shall be the duty of the District Court, at the instance of any creditor, to decree such forfeiture, and to appoint a commissioner for effecting the liquidation, whose duty it shall be to convert all the assets of the company, including any unpaid balances due by the stockholders on their shares into cash, and to distribute

the same under the direction of the Court amongst the parties entitled thereto in the same manner, as near as may be, as is done in cases of insolvency of individuals." (Our italics.) Moreover, our law has always been opposed to chancery jurisdiction and special pains was taken to exclude it, except by a special enactment of such provisions as it might be desirable to adopt.

Our law has made a provision for the forfeiture of corporations at the instance of creditors and the appointment of commissioners. R. S., Sec. 688.

It has pointed out the duties of tutors, administrators, syndics, curators and other officers. *The law* has never invested a receiver with any power. Suppose he is appointed a receiver *ex parte*, what can he do when he walks out of the Court with his new title? Has he the power of a syndic?

This Court had declared, with all the emphasis it is capable, that such appointment is absolutely null and void.

See recent case of Ober vs. Manufacturing Co., 44 An. 570.

A common law Court of chancery (the proper parties being before it) has the power, by appointing a receiver, of investing him with the title, possession, custody, administration and distribution of the assets of a corporation or partnership. The receiver is an ancient and well-known officer of that system.

Has a Louisiana Court the same power, independent of statute law, and does the word equity in Article 21 of the Civil Code, mean Chancery Law? The article itself shows the contrary, for it defines what it means by the word equity. It appeals "to natural law and reason," or "received usages where the positive law is silent." Received usages does not mean received usages in other systems of law or other jurisdictions.

Louisiana has always been jealous of chancery law, the so-called equity, and has provided against its introduction, by its various constitutions prohibiting its introduction except by special enactments. These constitutions the judges have always been sworn to support. In 1841, the Legislature passed resolutions requiring our representatives and senators in Congress to endeavor to have the chancery law abolished in the Courts of the United States, sitting in Louisiana. See Acts 1841, page 72, No.

90, recitals and resolutions; 1 Hennen's Dig. Equity, p. 474; Succession of Franklin, 7 An. 395; Const. 1879, Art. 31; Const. 1812, Art. 4, Sec. 11; Const. 1845, Art. 120; Const. 1852, Art. 117.

The Constitution of 1898 recognizing that receivers had no place in our law, gave jurisdiction for the first time to District Courts to appoint them (Art. 109), and the Legislature by Act 159 of 1898 carries that article into effect.

The term receiver, when used by our Courts prior to 1898, implies nothing more than a sequestrator or collecting agent to take charge of goods during the pendency of a suit *against existing parties* for the benefit of the parties therein. His office is not to represent creditors nor to defend actions as a syndic or executor or administrator may do. He has no vested interest. He is no officer of the Court in whom title is vested. C. C. 2978, 2979.

It would be no contempt of Court to sue him. He can not prevent creditors from suing the partnership or *existing* corporation. He is not substituted in the place of the partnership or corporation. He simply derives his power, whatever it is, from the parties and the order of the Court in the cause.

The Supreme Court emphasizes this point, and says:

"In deciding that the plaintiffs can maintain the present "action, we are not to be understood as giving our sanction to an "opinion sometimes expressed that the judges of the inferior "Courts *without the* assent of *parties to a suit* or with the assent "of only one of them *can exercise the powers* of a chancellor, "and appoint of their accord a receiver for the purpose of col-"lecting and keeping the funds attached that may be the subject "of litigation. Our opinion is *that the capacity of the plaintiffs "is derived entirely by the consent of the parties* who were inter-"ested at the time they were appointed."

"We do not believe *that the assent of the judge added to their "powers in the slightest degree.* 4 Rob. 525, Frazier vs. Wilcox.

"The receiver is but the agent of the parties having the legal "right to sue. The executor of Joseph H. Palmer, deceased, and "James H. Massey might have united in a power of attorney and "appointed Helme their agent to institute the suit on their own "behalf in his own name, Eggleston vs. Colfax, 4 N. S. 481; 5 "N. S. 40; 4 Rob. 521; 5 Rob. 478.

The special provisions of law applicable to this case are Sec. 688 of the Revised Statutes and Sec. 1612, which is as follows: "Whenever the charter of any corporation in this State shall be "decreed forfeited by any competent Court, the district attorney "of the district shall forthwith inform the Governor of the fact, "who shall thereupon appoint a liquidator to take charge of and "liquidate the affairs of the corporation *as in case of insolvencies "of individuals.* In case of death, resignation or removal of any "liquidator so appointed, the Governor shall fill the vacancy; and "in case of refusal of any person appointed to act as liquidator, he "shall appoint the district attorney of the district, who shall be "dispensed with giving bond and security. This section shall "not apply to banking or other corporations whose liquidation is "otherwise provided for by law." The extreme case, in the face of those ample provisions, does not exist.

The Attorney General is required by law to bring certain suits for the forfeiture of banking and certain other corporations in the First Judicial District. R. S., Sec. 131; charters of banks are forfeited under Sec. 284, R. S.

Even a valid appointment of a receiver by the Comptroller of the Currency, and doubtless by a Court of chancery in a common law State, does not dissolve a corporation or prevent a suit.

Bank of Bethel vs. Pahquogue Bank, 14 Wallace, 383, syllabus No. 3.

No Court of Louisiana had declared the charter of the Delta company forfeited, and the corporation could not escape its debts by committing *felo de se.*

"A corporation can never dissolve itself so as to defeat any of the just rights of its creditors." Brown vs. Union Bank, 3 An. 182.

II.

There is another reason, if any further reason were needed, why the State Court had no right by its *ex parte* decree to deprive the Remington Paper Company of the assets of the Louisiana Printing and Publishing Company, Limited ,by volunteering a receiver.

The charter of defendant company, which entered into and formed part of the contract of plaintiff in error, contained the following provisions:

ARTICLE 6.

"All the corporate powers of said company shall be vested in and exercised by a board of directors composed of five stock holders of said corporation to be elected annually on the third Monday in April, the first election to be held in 1893. All such elections shall be by ballot and shall be held at the office of the company under the superintendence of three commissioners to be appointed by the board of directors. Ten days' prior notice of such elections shall be given by publication in one of the daily newspapers of New Orleans, and *the directors then elected shall serve and continue in office until their successors shall have been elected.*

"Each stockholder shall be entitled to cast in person or by proxy one vote for every share of stock held by him, and the majority of the votes cast at such election shall elect the directors for the ensuing year."

"If at any time there should be a failure to elect directors as above provided, such failure shall not dissolve the corporation, but the then existing board of directors shall continue to hold office, and as soon as may be thereafter, another election shall be held, whereof ten days' prior notice shall be given by publication in one of the daily newspapers of New Orleans. *Any vacancy occurring in the board of directors, from any cause whatever, shall be filled by the remaining directors. Three directors shall* constitute a quorum for the transaction of business."

ARTICLE 8.

"Whenever this corporation shall be dissolved, either by limitation or otherwise, *its affairs shall be liquidated by three commissioners to be appointed from among the stockholders at a general meeting to be convened for that purpose after thirty days' prior notice by publication in one of the daily newspapers of New Orleans, and with the assent of a majority in amount of the capital stock of said corporation; said commissioners shall continue in*

office until the affairs of the company shall have been fully liquidated; and in case of the death of one or more of said commissioners, the survivors or survivor shall continue to serve." (Rec. 135, 136.)

(The italics are ours throughout this brief.)

Had not the plaintiff in error the right to expect that the liquidation of the company would be carried out as agreed in the charter?

The minutes of the defendant company of May 16, 1893, however, showed what the directors intended, as they attempted to resign in a body. (Rec. 57.)

We have already said that the right to sue one's debtor whether a real person or a corporation, is an absolute right, and that any attempt to hinder or prevent the creditor from suing its debtor is a fraudulent act in the eyes of the law, and that there can not be any distinction as to the sanctity or validity of the decrees of the various courts, nor any discrimination made between suitors; every judge is presumed to be qualified to render justice to the parties before him within his sphere.

What the opinion of the lawyers given by Colonel Hill at the meeting of the 16th of May, 1893, was, we are not, as we have said, informed. But it is clear that the acts of the directors ignoring the provisions of the charter and countenancing proceedings at variance wtih the due process of law were constitutionally void.

III.

No Court of Louisiana had decreed or had power to decree that there should be a stay of proceedings as to creditors. Section 688, Revised Statutes, which provides for the forfeiture of charters on the return of *nulla bona* on judgment and execution, seems to apply only to scientific, literary, religious and charitable corporations. But if applicable to all corporations, can have no place here for want of the requisite return. In all other cases the State alone can demand. *In re* Mechanics Society, 31 An. 631; 30 An. 954; 37 An. 103.

Where, then, was the power to prevent the creditor who had furnished the paper for the concern from suing and seizing anything then belonging to the corporation, the title to which and

custody, had not been confided to any one else and had never been seized and taken by any valid warrant of any Court from the Delta company?

The attempt in this case to withdraw the assets of the corporation from the pursuit of creditors, under the pretence of the *ex parte* order obtained by them without process, was, if not a fraud, at least a violation of law.

"The president and directors were incompetent without the "consent of the stockholders to confess a forfeiture and thus "abandon a corporation which it was their duty to administer for "the interest of the stockholders. They had no authority by a "voluntary act or confession to surrender the charter to the cor-"poration." State vs. Atchafalaya R. R. & B. Co., 5 Rob. 64.

"A corporation can never dissolve itself so as to defeat any "of the just rights of its creditors." Syllabus, Brown vs. Union Ins. Co., 3 An. 177; also p. 182; Cook on Stockholders, Sec. 633; p. 655; 7 Paige R. 294, Ward vs. Sea. Insurance Co.

The rights of creditors can not be defeated by a mere declaration of a resignation of the officers on whom process should be served, and in this case the sixth article of the Delta charter as it happens, we say *arguendo*, protects the creditors.

One clause in 6th Art. says: "If at any time there should "be a failure to elect directors as above provided such failure *shall* "*not dissolve the corporation*, but the existing board of directors "shall continue to hold office, and as soon as may be thereafter "another election shall be held, whereof ten days' prior notice "shall be given," etc.

The validity of the service of process on Col. James D. Hill, president of defendant Delta Company, the officer on whom process is to be served by the charter, has not and can not be questioned. See Commissioners vs. Sellew, 99 U. S., pages 626, 627.

Se also Badger vs. U. S. *ex rel.* Bolles, 93 U. S. 599.

"An attempt to create a vacancy at a time when such action "is fatal to the creditor will not be helped out by the aid of the "Courts."

Same case, p. 605, top of page.

The distinction between a receiver in chancery and a receiver appointed by a Louisiana Court may be further illustrated by the

different rights conferred ~~by the different powers of the Courts to confer rights~~. neither

Chancery can not grant letters of administration nor probate wills. Louisiana Courts, being endowed with what in England belongs to the Ecclesiastical Courts, can do both.

Bankruptcy and insolvent proceedings can not in England be carried on either in chancery or Courts of ordinary (probate) or admiralty, but can be brought in our State Courts.

Chancery has power to appoint receivers and invest them with the custody of the debtor's assets and imprison and fine and imprison any one disturbing the receiver.

Our Courts can accept and force surrenders of insolvents and stay proceedings. Chancery has no such power. The syndic appointed by our Courts represents creditors and the transferred property of insolvent and holds the latter under the jurisdiction of the Court as well as an administrator under a probate Court.

In these instances the property is not subject to the pursuit and seizure of creditors, for it is held for the benefit of all the creditors. But tutors to minors and curators of interdicted persons are also appointed by the Courts. Without such appointment they could not represent the minor or interdicted persons, but their power, like a Louisiana receiver, is limited. They can neither prevent suits against their wards nor seizures of the wards' property after judgment. Just so it is with an ordinary Louisiana receiver. He is no syndic, nor liquidator appointed by the Governor, to a corporation whose charter has been declared forfeited, nor an executor or administrator. He simply *represents the parties* to the suit where he has been appointed, as we have seen. If he has been appointed in a partnership suit he can not prevent a suit against the partnership nor the seizure of property when judgment has been obtained, as it has already been settled by our Courts. It is not in the power of the debtor by the appointment at his instance of a so-called receiver to delay and hinder creditors and thus do fraudulent acts indirectly, which if done directly would be declared fraudulent and void. Calling him a receiver does not, as we have seen, invest him with a power the Court itself was not empowered to give. Creditors can not be so easily baffled in the pursuit of debt due them.

They have the right to get their judgments against corporations and issue their executions thereon, and show a return of *nulla bona* if they can. What may lawfully be done in a State Court can be done in the United States Court, in the same manner that it can obtain judgment against an administrator. La. Rev. Stat., Sec. 688.

The Louisiana so-called "receiver" can not fight off creditors and screen property. A Louisiana Court, by appointing a so-called "receiver," can not invest him with English chancery power, nor transform itself into an English chancery Court. The person is simply a Louisiana agent without power to prevent a seizure of the debtor's property. Our Courts say:

"*The judges of inferior Courts can not of their own accord "appoint receivers for the purpose of collecting or keeping* funds "or evidences of debt which may be the subject of litigation before "them. Such appointments can be made only with the consent "of *all the parties interested*, and the assent of the judge can add "nothing to the power of the person so appointed." Frazier vs. Receivers, etc., and Wilcox, 4 Rob. 517; Syllabus 4; see pages 523, 525, 528.

"It appears to us that the judge of the commercial Court "labors under the misapprehension as to the power and control "he has over the agents appointed by parties to superintend their "interest in the tribunal over which he presides. We have more "than once said that he has no right to appoint receivers and "trustees of his own accord and will to take charge of money or "property, unless in the cases pointed out by law." U. S. vs. Bank of U. S., 11 Rob. 433. * * * *

"Nor has it [the Court] authority when simply asked for "process to enforce a judgment which the United States had ob-"tained against the bank to impose such conditions, as have been "imposed in this case, and in effect enjoin the plaintiffs without "affidavit or bond or security." 11 Rob. 434.

"It is not in the authority of a Court to appoint *ex parte* a "receiver of the assets of a partnership. A writ of sequestration "or a rule upon defendants to concur in the appointment of a "receiver would be the proper remedies." Syllabus; 16 An. 277, Martin vs. Blanchin.

"No principle of law is better settled than Courts have no "power to appoint a receiver *ex parte* without notice or hearing of "the party in interest, *and unless* a basis for the appointment is "alleged and proved." High on Receivers, Secs. 17, 111, 115; 4 Rob., 517; Martin vs. Blanchin, 16 An. 237; Mallady vs. Mallady, 43 An. 832.

"*It is well established that Courts have no jurisdiction* to "appoint receivers for corporations in the absence of *express* "statutory authority." High on Receivers. "Where there is a "statute it excludes all other modes of proceeding." Eng. and Am. Encyclopedia, Vol. 20, p. 31, Secs. 287, 288, 292, 298, 303, 749, and authorities there cited; French vs. Gifford, 30 Iowa, 148; Hedges vs. Paquet, 3 Oregon, 77; Baker vs. La. Portable R. R. Co.

"*An ex parte order is absolutely null and void.* He is not "a receiver because he calls himself so." Ober vs. Manufacturing Co., 44 An. 570, 571.

In the face of these authorities there is no ground for our adversaries to stand on.

Their clandestine order, obtained without citation to any one, without proof, affidavit or bond, was absolutely null and void. It bound nobody, for there were then no parties, and was no stay of proceedings nor bar to a creditor, and could not prevent him from taking such conservative proceedings as the law allows. The law allows the *cessio bonorum*, and the forfeiture of charters in the modes pointed out by law, but it can not be pretended here that the mode pointed out by the eighth section of the charter of the Delta Co. or Sec. 1612 of the Revised Statutes, which provides that when a charter of the State has been decreed forfeited, the District Attorney shall inform the Governor, who will thereupon appoint liquidators, was attempted.

The appointment of a Louisiana receiver or sequestrator does not change the ownership of the property or rights of the parties. Creditors may still pursue it. The sequestrator or receiver in ordinary cases only represents the parties to the suit. He can not screen any of them from the pursuit of creditors.

"When property in the hands of a judicial sequestrator has "been seized under *process from another Court* than that which

"issued the sequestration, the former tribunal may pronounce on "the validity of the seizure, though it have no power to order a "release of the sequestration.

"The sequestration, whether conventional or judicial, creates "no lien or privilege. It is merely a conservative measure. The "possession of the *sequestrator* is that of the *party legally entitled "to it,* and in all cases the party against whom it has been obtained "may release the property by giving bond with security." 2 Rob. 150.

This case covers the case at bar. The Bank of Alabama, on a judgment *in the First Judicial Court,* had seized *"in the hands "of Frederic Buisson, judicial sequestrator,* the goods and chattels, "lands, tenements, moneys, effects or property of any kind which "he might have in possession or under his control belonging to "the defendant [Hozey & Bach] to an amount sufficient to satisfy "this writ, and particularly any *money* he might now or hereafter *"have in virtue of his office as judicial sequestrator,* of which "seizure nothing came into the hands of the sheriff," etc. (p. 151).

Interrogatories were propounded *to Buisson as garnishee.* Buisson pleaded to the jurisdiction and answered that as *judicial* sequestrator appointed by the commercial Court he had $1532.96. The exception to the jurisdiction was overruled, and it was held that the seizure was valid, and ruling of the Court was right, notwithstanding the appointment of the sequestrator by another Court.

The case implies that the bank then should apply to the commercial Court for whatever order was needful to protect its rights (page 154). This is precisely what we are trying on behalf of the Remingtons to do here.

A similar principle is laid down in the case of Jeffries against the Belleville Iron Works Company, 18 An. 682. The defendant corporation sought to make a voluntary surrender. A stay of proceedings was ordered, a syndic was appointed and a tableau of distribution was filed. It having been declared on plaintiff's *action of nullity* that the company could not make a voluntary cession, he (the plaintiff) having obtained judgment, disregarded the insolvent proceedings and issued a *fi. fa.* and made a seizure,

the validity of which being questioned the Supreme Court said, Mr. Justice Labauve being the organ of the Court: "We have "concluded after the most mature deliberation, that the judgment "homologating the tableau of distribution were [was] not binding "on plaintiff so as to prevent him from seizing money and effects yet in the hands of the so-called syndic or other garnishees such "money and effects being considered as the property of the com-"pany after the judgment setting aside the surrender." 18 An. 691; 15 An. 19.

Cleveland City Forge Iron Co. vs. Taylor Bros. Iron Works, 54 Fed. R. 8.

The recent declaration of the State Supreme Court that an *ex parte* order appointing a receiver is an absolute nullity, and that calling him receiver does not make him such, ought to be held decisive. 44 An. 570, Ober vs. Manufacturing Co.

We rely on our case as it stands of record. But if any outside statements are made they are repelled by the facts. The Remington case is still pending against the Delta Company in the Circuit Court. Process was duly made and served. Watson, in his allegel capacity of receiver, was refused by Judge Pardee the right to represent the Delta Company in the suit as defendant.

On the 29th day of May, 1893, the Remington Paper Company being a creditor of the Delta Company, and having the vendor's privilege on certain paper and the company having given a ground for attachment, sued out of the Circuit Court a sequestration, giving bond in the sum of $5000, and placed the same in the United States Marshal's hands, and the writs were served with the citation the same day (see Suit 12,197). If the Delta Company still existed it was our debtor and subject to the due process of law. The burden of proof is on our adversaries to show that the Remington Paper Co. had lost this constitutional right.

2. Pope & Watson claim that the seizure was illegal because Judge Ellis had issued May 17, 1893, an *ex parte* order without proof on a petition filed by Pope without a prayer for a citation to any one which did not contain a single allegation either under the common law, chancery jurisdiction or by the Louisiana law which would have authorized the appointment of a reciver. And there was no prayer to make the corporation or any one else a party to

the suit, and the case standing with Pope as the *only party* to it, the following order was rendered on the paper:

"The Court, considering the foregoing petition, and particu-"larly the intervention of the State of Louisiana, by her Attorney "General, of the creditor mentioned,

"It is ordered that John W. Watson be and he is hereby ap-"pointed receiver of the Louisiana Printing and Publishing Com-"pany, Limited, with full power to liquidate and wind up its af-"fairs. Let John W. Watson take the proper and legal oath, and "otherwise properly qualify. Let an inventory be taken by F. H. "Mortimer, notary public, of the assets and property of said Lou-"isiana Printing and Publishing Company, Limited, in this parish, "and let H. Messonier and Pat J. Kelly be appointed appraisers to "value the property, and let W. K. Horn, Esq., be appointed to "represent the absent creditors herein.

"New Orleans, May 17, 1893.

(Signed) "T. C. W. ELLIS, *Judge.*"

The judge was mistaken about the intervention of the State, which is drawn up in the same handwriting as Pope's *ex parte* petition. It was not filed at that time and was filed afterward, viz.: May 18, 1893, and it simply says that Pope alleges so and so, and make no positive allegation, such as the law requires on the part of the State. There being no prayer for a citation, none was issued until ten days afterward, but Watson filed an oath on the day after his appointment, May 18, 1893.

The whole proceeding shows an extraordinary haste to defeat creditors. Mortimer had made no inventory and Watson had given no bond, and no letters had issued to him or writ of sequestration issued when the Remington Company made its seizure. Did this take away our debtor from us and destroy its existence and transfer his property to another? All the power Watson had was what the *ex parte* order on Pope's *ex parte* petition conferred, and that was all that stood in the way of and arrested the suit of the Remington Company in the United States Court. Hence that *ex parte* decree, as we have seen, need only be declared invalid to entitle Remington Company to proceed with their suit.

THIS EX PARTE PROCEEDING BINDS NO ONE. Windsor vs. McVeagh, 93 U. S. 274. Syllabus No. 1.

It is absolutely null. See cases already quoted. 43 An. 832; 24 An. 338; 2 Rob. 150, 153; 3 An. 182; 44 An. 570.

The subject matter was not subject to an insolvent court. 15 An. 19; 18 An. 691.

If the *ex parte* order had been made *bona fide* in chancery it would not have bound the Remington Co., for the order, "as against "third persons or interested parties not notified, can not date or re- "late back beyond the order of appointing him, and it is irregular "and improper to insert such clause in the order of appointment, "as it would be unjust to vest the receiver with title at a period "previous to his appointment." Beach on Receivers, Sec. 168, p. 129. See also Van Alstyne, Sheriff, etc., vs. Cook Receiver, 25 New York, 489, where execution held against the receiver. See Beach on Receivers, 168, 419, 420.

3. Mr. Watson, at the time of the seizure by the *Remington Company*, had not given any bond, while the Remington Company had given bond for $5000.

It is laid down in the English and American Encyclopedia of Law that "The giving OF SECURITY IS A PREREQUISITE TO RECEIV- "ER'S CONTROL OF PROPERTY." Vol. 20, page 162.

We have already cited authorities to show that all acts which tend to deprive another of his legal remedies are reprobated by our law and give rise to damages. R. C. C., Art. 2315; Irish vs. Wright, 8 Rob. p. 428; Dennistown vs. Mattard, 2 An. 14, 16; Smith vs. Benneck, 12 Rob. 20, 568. *1 Chitty on Pleading, 132; 2 Hennen, page 1053.*

In the action of nullity allowed by Arts. 604, 612, 607, Code of Practice, the examples are not exclusive, but illustrative of the kind of cases which may be brought. 42 An. 194. The case of Jack vs. Harrison shows the right of a suitor to have obstacles removed which stand in the way of creditors' demand. 34 An. 736, 739, 740; Clark vs. Christen, 12 L. R. 394; Prichel vs. Bordelon, 9 Rob. 191.

If a third person chooses to appeal instead of bringing an action of nullity, he must take his adversary's case as he finds it. In

the action of nullity it is elementary he can allege and offer further proof.

Where such *ex parte* order is obtained collusively and used under the pretence that it is a valid order appointing the party a receiver, and the party thereby makes use of such pretence to deprive a creditor of his valid rights to an amount sufficient to give jurisdiction, the law will decree the nullity of such *ex parte* order the same as it would if it affected a real right (see R. C. C., Art. 2315); Irish vs. Wright, 8 R. 428; Haas vs. Haas, 35 An. 885.

ALBERT VOORHIES,
Of Counsel.

No. 146.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Jan. 14, 1899.

THE REMINGTON PAPER CO.,
PLAINTIFF IN ERROR,

v.

JOHN W. WATSON AND OTHERS,
DEFENDANTS IN ERROR.

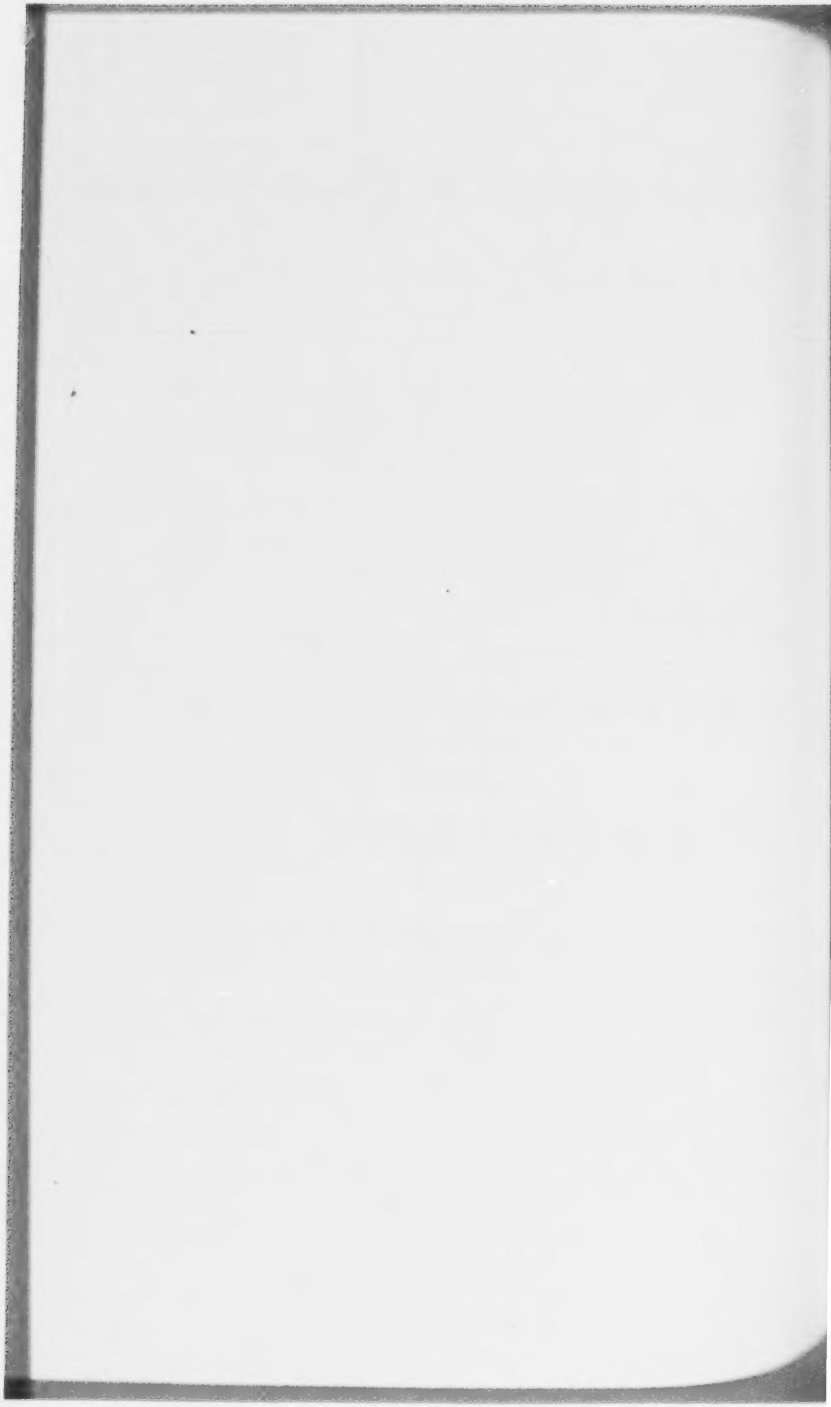
No. 146.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR.

ALEXANDER PORTER MORSE,
Of Counsel.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.



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Brief for Defendants in Error.

STATEMENT.

On the 17*th day of May, A. D.* 1893, John W. Watson, one of the defendants in error, was, by order of the Civil District Court of the Parish of Orleans (a court of general jurisdiction), appointed receiver of the "Louisiana Printing and Publishing Company, Limited," a corporation organized under the laws of the State of Louisiana, and particularly under the act of 1888 providing for the organization of corporations of limited liability. (Record, 127, 133-137.) This appointment of receiver was made

upon the petition of creditors in whose suit the State, by her Attorney General, intervened and prayed for the appointment of a receiver and ultimately for the forfeiture of the charter of the corporation.* (Record, pp. 126–132.)

The allegations upon which the Civil District Court acted in appointing Watson receiver were that the officers of the corporation had abandoned their corporate functions and duties and had left the corporation's property to be seized by creditors, etc. (Record, pp. 126–7.)

Upon these allegations the court appointed Watson, receiver, who subscribed the oath of office, and entered on his duties May 18, 1893. (Record, pp. 127, 138.)

On the 29th of May, 1893,—six days after the appointment by the Civil District Court of Watson, receiver,—the plaintiff in error, a non-resident corporation, alleging that it was a creditor of the "Louisiana Printing and Publishing Company, Limited," filed attachment proceedings in the *United States Circuit Court for the Eastern District of Louisiana*, making the Louisiana Printing and Publishing Co. defendant, alleging fraudulent disposition of property, etc., etc. (Record, pp. 115–117.) A writ of sequestration was issued the same day. (Record, p. 121, 122.)

Upon motion to quash attachment and sequestration in the United States Circuit Court, by Watson, receiver, the latter court, *on the 6th of June*, 1893, ordered release of the property theretofore seized by the marshal under the aforesaid proceedings. (Record, pp. 123, 124, 138, 139.) The order was in terms that "*marshal restore the property seized in this cause under the writs of attachment and sequestration*

*Citation was made upon the president of the failing corporation. (Record, p. 128.) No stockholder appeared in opposition. (Record, pp. 98, 99.)

to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the Civil District Court which appointed Watson, or from the appellate court to hold same under said writs." (Record, pp. 139, 140.)

On the 9th June, 1893,—three days after the order for release of attachment of the marshal by the Circuit Court of the United States,—petitioner below (plaintiff in error here) filed in the Civil District Court of the Parish of Orleans petition and action of nullity and for damages against Watson, receiver, Pope, petitioning creditor, and The Louisiana Printing and Publishing Company.* The petition alleged that the appointment of Watson as receiver was null; that Watson and the president of the failing corporation and others fraudulently conspired to hinder and delay petitioner in the prosecution of its rights under the laws and Constitution of the United States of America, and that Watson, and Pope (petitioning creditor in the original suit) were liable to it in damages in the sum of thirty-eight hundred and sixty-three dollars and fifty-five cents, amount of its claim. (Record, pp. 1–4.) Amended petitions were filed July 1, 1893, and May 24, 1894 (Record, pp. 6 and 10), in the latter of which it was averred, somewhat more particularly, that all the proceedings in the Civil District Court were in violation of the fifth and fourteenth amendments of the Constitution of the United States. (Record, pp. 10–11.) Upon hearing, the Civil District Court rendered judgment in favor of Watson as receiver, and dismissed the suit for damages. (Record, pp. 99, 100, 103–4.) From that judgment peti-

* Action of Nullity: Garland's Revised Code of Practice of Louisiana, bottom of page 476 *et seq.*

tioner below (plaintiff in error here) sued out writ of error to the Supreme Court of Louisiana, which affirmed the judgment of the Civil District Court. (Record, pp. 173–177.) *No appeal was taken from the judgment in the original suit dated May* 19, 1893, *in which Watson was appointed receiver.* (Record, p. 100.)

Points of Law or Fact.

Upon the facts disclosed by the record, it is submitted that this Court cannot exercise supervisory power over the judgment in this cause rendered by the Supreme Court of the State of Louisiana. And the writ of error should be dismissed for want of jurisdiction for reasons hereinafter stated.

First. The record presents no Federal question. (Oxley Stave Co. *v.* Butler Co., 166 U. S. 648; Fowler *v.* Lamson, 164 U. S. 252; C. N. & W. R'y *v.* Chicago, 164 U. S. 454.)

"A real, and not a fictitious Federal question is essential to the jurisdiction of this court over the judgments of State courts."

Hamblin *v.* West. Ld. Co., 147 U. S. 530.
St. Louis &c. Ry. Co. *v.* Missouri, 156 U. S. 483.

"The bare averment of a Federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay."

New Orleans *v.* New Orleans Water Works Co., 142 U. S. 79.

Second. As no appeal or writ of error has been taken from the order (judgment) of the Civil District Court of Louisiana of *May* 17, 1893, appointing Watson receiver of the failing corporation, the matter is *res judicata* and conclusive;

Third. The question of the validity of the attachment and sequestration in the Circuit Court of the United States is settled by the order of that court adverse to the plaintiff in error, in a proceeding between plaintiff in error and Watson, one of the defendants in error, involving the seizure thereunder; and if so, said decision is *res judicata* upon the question of said attachment and sequestration. But if said order of the Circuit Court of the United States is not *res judicata* upon the validity *vel non* of said attachment and sequestration, the question is still pending in that court between plaintiff in error and Watson, receiver, and others, defendants in error.

I.

As to Jurisdiction.

No Federal question was presented in the Civil District Court or in the Supreme Court of Louisiana, and consequently this Court will not entertain jurisdiction to review the judgment of the latter court.

Neither the allegations of petitioner below (plaintiff in error here) in the original or amended petitions nor in the assignments of error set out any facts which constitute a right, title, or privilege under the several clauses of the fifth and fourteenth amendments.

The controversy initiated by petitioner (plaintiff in error here) was instituted and prosecuted on the theory that

the procedure of the courts of Louisiana was irregular and informal, and null and void under the laws of the State of Louisiana.

However the proceeding of the petitioner (plaintiff in error here) before the courts of Louisiana may be regarded,—whether as primarily an ancillary proceeding to that of the same petitioner in the United States Circuit Court against the corporation as its debtor, and secondarily, an action to annul the order appointing the receiver for certain alleged informalities in the proceedings, coupled with a demand for damages against the receiver and the petitioning creditor, —its essential character is not altered. It was an attempt on the part of a third-party creditor to appear in a judicial litigation, not for the purpose of asserting a right, title, or interest in and to the *res in custodia legis* for the common benefit of all creditors, but for the purpose of avoiding the processes of law which were invoked for the common benefit of all creditors, and with this view to substitute by preference an alleged right or claim of said third party. The informalities, if any, in the Civil District Court, denounced by plaintiff in error, did not oust or render void the jurisdiction of that court.

There is a wide difference between want of jurisdiction in a court and error by a court.

The failing corporation was properly cited to answer the petition of a creditor for the appointment of a receiver, and it matters not if no citation was asked for in that petition, for citation issued and answer was filed. (Record, p. 128.)

The informalities complained of by petitioner (plaintiff in error below) raised questions of local law or practice in respect of which the judgment of the State court was final.

Oxley Stave Co. *v.* Butler Co., 166 U. S., p. 652.

The Civil District Court for the Parish of Orleans is a court of general jurisdiction, and rightly exercised its jurisdiction over the subject-matter and the parties in the original suit, in which Watson was appointed Receiver.

Constitution of the State of Louisiana of 1879, Article 130.

In the matter of the Louisiana Savings Bank, 35 La. Ann., p. 179.

Raymond *v.* Palmer, 35 La. Ann., p. 277.

The proceedings in the courts of Louisiana was "due process of law" according to the constitution and laws of the State of Louisiana, because the Supreme Court of that State has so decided. If it were not "due process of law" under the State constitution and laws, this Court will not exercise its revisory power, unless it be also no due process of law under the Constitution of the United States. What in all cases shall constitute "due process of law," and the reverse, within meaning of the constitutional amendments, it is impossible for any court to define abstractedly and *a priori* with legal precision. The varying relations of business, of society, and of government are constantly introducing new conjunctures, which, as they cannot be anticipated by the courts, must be determined as they arise under the provisions of the Constitution.

So sensibly has this been felt by this Court that it has always and uniformly declined to furnish an abstract and comprehensive definition of "due process of law" in all cases.

Davidson *v.* New Orleans, 96 U. S. 97.

Though certain general propositions have been declared by the Court relative to this subject, each case, as it has come before this Court, has been ruled with reference to its own peculiar facts and circumstances in order to ascertain its harmony or the reverse with the true construction of the Constitution.

Dent *v.* West Virginia, 129 U. S. 123; Missouri Pacific R'y *v.* Humes, 115 *Id.* 519; *Ex parte* Wall., 167 *Id.* 289; Hurtado *v.* California, 110 *Id.* 535; Hagar *v.* Reclamation Dist., 111 *Id.* 708; Hovey *v.* Elliott, 167 U. S. 409.

The questions made by the errors assigned are in language and effect too general and indefinite to come within the provisions of the constitutional amendments, or the decisions of this court.

Crowell *v.* Randall, 10 Peters, 368.

Oxley Stave Co. *v.* Butler Co., 166 U. S. 656.

II.

It is perfectly apparent that the petition and amendments thereto by petitioner (plaintiff in error here) proceeded upon the ground that the several steps in the original suit appointing a receiver were repugnant to the State laws, and, being so repugnant, the petitioner was entitled to a specific judgment, for which he prayed accordingly. But whether the proceedings in the State courts were repugnant to State law or in conformity thereto, this Court has no jurisdiction to determine. And, as the petition prayed for relief, it amounted, in substance, to a general appearance.

It is true that the petition contained allegations of collusion and fraud—badly enough alleged as often determined by this Court—because no facts or circumstances amounting to such collusion or fraud are in such petition alleged. But that collusion or fraud passed upon by the highest court of the State, and not pretended as evasions of the supreme law of the land, were open to correction on error to this Court, no one, it is supposed, will be found to affirm.

III.

Second. As no appeal or writ of error has been taken in the original suit from the order of the Civil District Court for the Parish of Orleans of *May* 17, 1893, appointing Watson receiver of the failing corporation, the matter is *res judicata* and conclusive.

IV.

Third. The validity of the attachment and sequestration in the Circuit Court of the United States is settled by the order of that court adverse to the plaintiff in error in a proceeding between plaintiff in error and Watson, one of the defendants in error, involving the seizure thereunder; and, if so, said decision is now *res judicata* upon the question of said attachment and sequestration. But if said order of the Circuit Court of the United States is not *res judicata* upon the validity *vel non* of said attach-

ment and sequestration, the question is still pending between plaintiff in error and Watson, receiver, and others, defendants in error.*

V.

On the Merits.

It is alleged in argument that, under the law of Louisiana, a receiver does not represent creditors nor defend actions as a syndic or executor or administrator may do; that he is no officer of the court in whom title is vested. (Brief for plaintiff in error, p. 27.) But the law as to this seems settled by the courts in Louisiana; and no error appears in this record either in the appointment or in the acts of the court in respect of the appointment of the receiver Watson.

Where the stockholders of a corporation, in whom is vested by charter the right to liquidate its affairs, consent to appointment of a receiver by the court, they abdicate

* "The order of the federal court having first released and discharged the seizure and required the marshal to surrender the property to the receiver, and the creditor having thereafter instituted an action in the State court to annul the receiver's appointment and for damages sustained thereby, the two suits are totally distinct and separate, the creditor having failed to exercise the option given it by the federal court to apply to the State court within five days for the retention of the seizure. Not having availed itself of that option and not having used any effort to enforce or protect its vendor's lien upon the property in the possession of the receiver, the creditor is without any well-grounded claim for damages against the receiver personally, who acted under the authority of orders of a court possessed of competent jurisdiction; and the creditor's claim for damages being without foundation, no occasion is presented for the court to examine and pass upon the validity of the receiver's appointment."

Syllabus of decision of the Supreme Court of Louisiana in Remington Paper Co. *v.* Watson. (49 La. An., p. 1296.)

their right in favor of the court's appointee, and no creditor has a right to complain.

In re Louisiana Savings Bank, 35 La. Ann. 200.

Where the officers of a corporation abandon their positions, and expose the corporate assets to loss by delapidation or theft, the courts of Louisiana will appoint a receiver.

Baker *v.* Portable R.R. Co., 34 La. Ann. 754;
Stark *v.* Burke, 5 La. Ann. 740;
N. O. Gaslight Co. *v.* Bennett, 6 La. Ann. 456;
Brown *v.* Union, 3 La. Ann. 182;
Fallet *v.* Field, 30 La. Ann. 162.

It appears from the record that every officer and every director of the failing corporation abandoned their respective positions and functions. (Record, pp. 57, 58.) And such fact clearly warranted the action of the Civil District Court for the Parish of Orleans in appointing the receiver. The plaintiff in error is an ordinary creditor who seeks a preference by attachment. There is neither equity or justice in its demand. Such creditor demands that it be allowed to absorb all the assets of the company to satisfy its single claim.

Alleged errors of a State court which involve questions either of fact or of State, not Federal law, are not reviewable in the United States Supreme Court on writ of error.

Kennard *v.* Louisiana, 92 U. S. 480.
Quimby *v.* Boyd, 128 U. S. 488.

"The State has full power over remedies and procedure in its own courts, and can make any order it pleases in respect thereto, provided that substance of right is secured without unreasonable burden to parties litigant."

Antoni *v.* Greenhow, 107 U. S. 769.

York *v.* Texas, 137 U. S. 21.

However it may have been at an earlier period, the jurisprudence of the State of Louisiana in respect to the power of the courts to appoint receivers is now well settled.

"It is claimed that the judgment of July 1st is absolutely null, by reason of the want of jurisdiction of courts of this State to appoint receivers or commissioners for the liquidation of corporations.

"When, in the case of Baker *v.* Portable Company, 34 An. 754, we laid down the general rule that 'courts have no jurisdiction to appoint receivers for corporations in absence of express statutory authority,' the word *jurisdiction* was, perhaps, inaccurately used.

"The exception which we maintained in that case was not one to the jurisdiction of the court, but one of no cause of action.

"Certainly we did not mean to impute to the courts such defect of jurisdiction *ratione materiæ* as could not be supplied by consent and as would render their judgments in the premises absolute nullities. We rather meant to lay down a rule of judicial action than a canon of jurisdiction—a limitation of judicial right rather than of judicial power.

"The rule is founded upon the respect and protection due to the rights of a corporation in common with those of other persons. As we said in that case: 'A corporation is a person, whose possession and control of its property and affairs must be respected like the similar rights of individual persons. They cannot be interfered with in preliminary proceedings and in advance of judg-

ment, except in cases specially provided by law and on strict compliance with the requirements thereof.'

"The immunity from such interference is evidently personal, and capable of being waived by proper and valid consent in the case of corporations as of individuals.

"The principles recognized in the following cases, *in pari materia*, are fully applicable: Frazier *v.* Wilcox, 4 Rob. 517; U. S. *v.* Bank, 11 Rob. 418; Martin *v.* Blanchin, 16 An. 237.

"The jurisdiction of the courts over the subject-matter of appointing receivers to corporations, and their power to make such appointments in proper cases, have been frequently recognized. Stark *v.* Burke, 5 La. An. 740; N. O. Gaslight Co. *v.* Bennett, 6 An. 456; Brown *v.* Union, 3 An. 182; Fallett *v.* Field, 30 An. 162.

"In the matter of the Louisiana Savings Bank, 35 La. An., p. 199 (A. D. 1883)."

This doctrine was reaffirmed in Raymond *v.* Palmer, *ib.* p. 277.

In conclusion, it is submitted that the five several assignments of error (brief of counsel for plaintiff in error, pp. 9–13) fail to present any Federal question which this court will review. And further, that the said several assignments of error present questions of local law or practice in respect of which the judgment of the Supreme Court of the State of Louisiana was final.

Respectfully submitted.

ALEXANDER PORTER MORSE,
Of Counsel for Defendants in Error.

WASHINGTON, D. C.,
January 14, 1899.

REMINGTON PAPER COMPANY *v.* WATSON.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 146. Argued January 17, 18, 1899. — Decided March 13, 1899.

On the facts stated in the opinion, the court holds that the plaintiff in error, a New York corporation, having, of its own motion, sought to litigate its rights in a state court of Louisiana, and having been given the opportunity to do so, no Federal question arises out of the fact that the litigation there resulted unsuccessfully, and without the decision of a Federal question which might give this court jurisdiction; following *Eustis* v. *Bolles*, 150 U. S. 370, in holding that when a state court has based its decision on a local or state question, the logical course here is to dismiss the writ of error.

THE case is stated in the opinion.

Mr. E. T. Merrick for plaintiff in error. *Mr. Albert Voorhies* filed a brief for same.

Mr. Alexander Porter Morse for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

It is objected that the record presents no Federal question.

In an action brought in the civil district court for the parish of Orleans, State of Louisiana, John Watson, one of the defendants in error, was appointed, on the 17th day of May, 1893, receiver of the property and assets of the Louisiana Printing and Publishing Company, a corporation created under the laws of the State of Louisiana. As such receiver he took possession of such assets and property. There was no appeal taken from the order of appointment.

The plaintiff in error, a corporation created under the laws of New York, and having its residence in that State, brought an action in the United States Circuit Court for the District of Louisiana against the Louisiana Printing and Publishing Company, to recover $3863.55, for paper furnished the company, and sued out writs of sequestration and attachment, by

authority of which, on the 29th day of May, 1893, the United States marshal seized certain property of the company and took the same from the possession of Watson.

On May 30, 1893, Watson as receiver filed a motion in said Circuit Court to quash the attachment and sequestration sued out, "and said rule or motion concluded with an order which the mover in the rule desired the court to adopt;" and thereupon the judge of the court made the following order:

"Let this rule be filed, and let the Remington Paper Company, through their attorneys, Merrick & Merrick, show cause on Thursday, June 1, at 11 A.M., why the above motion should not be granted."

To which motion the Remington Paper Company filed the following:

"The plaintiff in this case, for the purpose only of objection to the regularity of the rule taken by John W. Watson, calling himself receiver, by way of exception, says:

"That said mover as a pretended receiver cannot interfere in the progress of this suit in the informal and summary manner attempted by him in his said rule, nor has he any right to be heard to demand by the judgment of this court anything of this court without coming into court by regular process and proceedings and in the mode allowed by law, wherein the plaintiff will be entitled to a trial of questions of law and fact in the mode and manner guaranteed by the Constitution and prescribed by law.

"Wherefore this plaintiff says that this rule taken by said John W. Watson should and ought to be dismissed at the cost of said mover.

"MERRICK & MERRICK, *Att'ys.*

"And in the event the foregoing exception to said rule is overruled and this plaintiff is required by your honorable court to answer the same, and not otherwise, this plaintiff denies the allegations contained in said rule and denies that said John W. Watson, the pretended receiver, has any legal right or authority under the *ex parte* proceeding on which he relies to take possession of the property attached in this case nor to

hinder or delay your petitioner from collecting its just debt against said defendant.

"MERRICK & MERRICK, *Att'ys.*"

The plaintiff prayed the court to decide the exception to said rule before proceeding further or hearing any testimony on the rule taken.

The court, however, decided to hear the testimony on the allegations of said rule, and after hearing the same, on the 6th day of June, 1893, made the following order:

"This cause having been heard and submitted upon a rule taken by John W. Watson, appointed a receiver of the defendant by the civil district court for the parish of Orleans, to set aside the writs of attachment and sequestration issued in this cause, and upon the exception thereto filed by the plaintiff, and the same having been considered by the court, it is now ordered, for the reasons assigned in the written opinion on file, that the marshal restore the property seized in this cause under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs."

The opinion of the court referred to in the order recites that Watson had been "appointed receiver upon a petition of a creditor and on the intervention of the attorney general; which original and intervening petitions averred that all the officers of the defendant corporation had resigned and that in fact it was a vacant corporation." It was further said:

"I do not think this court can deal at all with the alleged irregularity in the appointment of the receiver, such as the alleged want of an execution, etc., preceding the appointment. It appearing to this court that a court of concurrent jurisdiction has appointed a receiver who was in actual possession, this court has no right to attempt to dispossess him. All the matter as to irregularity of the appointment must be dealt with by the court that appointed. I understand the doctrine of the comity of courts to be this — that where a court

has jurisdiction of a cause and property and through its proper officer is in possession, it is the duty of all other courts to refrain altogether from the attempt to take that property into possession except by permission of the court in possession. It is not a question of the validity of process, but a question of public order, and the rule of comity is based upon the duty of courts to abstain from anything that might lead to violence. There having been a receiver appointed by a court of competent jurisdiction and he being in possession of the property attempted to be seized by the marshal, and which was in fact seized, I think the duty of this court is to restore the property practically to the situation in which it was when the property was interfered with by the marshal."

The bill of exceptions signed by the Circuit Judge shows that Watson was in possession of the property, engaged in making an inventory of it when it was seized by the marshal, and had taken the oath of office but had filed no bond.

On the 9th day of June, 1893, three days after the order of the Circuit Court, the Remington Company filed in the civil district court for the parish of Orleans a petition and action of nullity and for damages under the laws of the State against Watson, receiver, Pope, petitioning creditor, and the Louisiana Printing and Publishing Company.

The petition alleged the indebtedness of the latter company to petitioner, the action by the latter in the United States Circuit Court, the attachment of property, the motion of Watson as hereinbefore stated, and the ruling and order of the court thereon; that the effect thereof will be to prevent the execution of any judgment rendered, and that "Watson was without right to stand in the way of a just debt because he had given no bond at the date of the seizure of property under the attachment nor complied with the order of the court, nor had proceedings been had to perfect his appointment or to give him the right to control the property or to prevent any suit from being brought or any court from subjecting the property of said defendant by due course of law to the payment of its debts, and the conduct of the said Watson, Frank H. Pope and those confederating with them in attempting to

screen the property from payment of debts was collusive and a constructive fraud upon petitioner and a violation of its rights under the laws and Constitution of the United States of America." That the order appointing him was null and void because obtained "upon the collusive petition of Frank H. Pope without citation to any one, without oath or affidavit or any proof and without contest." It was further alleged that the so-called intervention of the attorney general did not cure the nullity of the proceedings of Pope and Watson, and that the State was without authority to intrude itself in that manner into the controversies of private persons. There was a prayer for citation and that the order appointing Watson receiver be declared as against petitioner null and void and of no effect, and the same be ineffectual as a bar to said attachment or sequestration or other proceedings on the part of the petitioner in the Circuit Court of the United States, and that said Watson and Pope be condemned, as *in solido* or otherwise, to pay petitioner the sum of $3863.55 damages caused it by the obstruction of its proceedings in the Circuit Court, and for general relief.

The petition was subsequently amended, amplifying somewhat the charges of illegality in Watson's appointment, and alleging with more detail his action in the Circuit Court, and averring "that said *ex parte* order of this court, dated the 17th day of May, 1893, purporting to appoint John W. Watson receiver of the Louisiana Printing and Publishing Company, Limited, was obtained in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in this, that said decree was obtained without due process of law, it being *ex parte* and without affidavits, bond or proof, as more at large alleged in the original petition, and the said unconstitutional and void order and decree is set up and alleged by the defendants as a bar and a defence to prevent your petitioner from recovering and having its said just and valid debt from its said debtor, the said Louisiana Printing and Publishing Company, Limited, and thus depriving petitioner of its claim duly secured by due and legal process of law on the property of its said debtor, and seized under said

writs from said Circuit Court of the United States, and said defendants seek through said void *ex parte* order of the 17th day of May, 1893, to effect the transfer and —— of the possession and property of said Louisiana Printing and Publishing Company under the seizure of petitioner under its writs to said John W. Watson, thereby screening the same from ordinary and legal pursuits of creditors in the modes pointed out by law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States."

To the petition Watson answered, denying all and singular its allegations except his appointment as receiver, and "assuming the attitude of plaintiff in reconvention," alleged that the Remington Paper Company was a non-resident corporation, and that by its "unlawful and unwarranted seizure of the property of said Louisiana Printing and Publishing Company, Limited, which seizure has been released, said Remington Paper Company has damaged the creditors of said Louisiana Printing and Publishing Company, Limited, for whose benefit *ut universi* this reconventional demand is now prosecuted."

The damages were itemized and alleged to have amounted to $3847.15.

The answer concluded as follows:

"Wherefore said John W. Watson prays that said plaintiff's petition be dismissed; that he be quieted in his position as receiver; that his appointment be ratified and confirmed as prayed for by said Louisiana Printing and Publishing Company and by a large majority of its stockholders and its board of directors, and that, as the representative of the creditors of said company, he have judgment on his reconventional demand against plaintiff in the sum of $3847.15 and all costs of this suit."

Upon the hearing judgment was rendered as follows:

"1st. In favor of John W. Watson and Frank H. Pope, rejecting and dismissing the suit of the Remington Paper Company for damages.

"2d. That the demand of the Remington Paper Company against John W. Watson, Frank H. Pope and the Louisiana Printing and Publishing Company, represented by John W.

Watson, receiver, of the nullity of the order appointing said Watson receiver, etc., be also rejected and dismissed, and that said appointment and order be maintained.

"3d. That the reconventional demand for money claimed by Watson as receiver herein be dismissed as of non suit, and that the Remington Paper Company be condemned to pay all costs of this suit."

The Supreme Court affirmed the judgment (49 La. Ann. 1296) and the case was brought here.

The Supreme Court, after reciting the proceedings taken by the respective parties and stating their contentions, said that the record showed that the Remington Company did not comply with the order of the United States Circuit Court, "but, on the contrary, this action of nullity and claim for damages was resorted to instead of such an application," and it was held that the action depended necessarily upon a claim for damages, and that the company had no such claim. It was further said:

"Addressing ourselves to the question of damages, we are of opinion that the plaintiff was plainly at fault in not employing the proper means to protect its own rights, (1) first, because it used no effort to avail itself of the permission granted by the Circuit Court whereby the seizure might have been retained on the property; (2) second, because it took no means or proceedings looking to the protection and preservation of its alleged vendors' lien upon the property after it had passed into the custody and control of the receiver, either by injunction against a sale by the receiver or a third opposition claiming the proceeds of sale, under a separate appraisement and sale.

"In our view, such measures could have been easily resorted to on the part of the plaintiff, without prejudice to this or its Circuit Court suit, and, failing in this, an insurmountable obstacle has been raised to its claim for damages.

"For surely the plaintiff cannot be heard to say that Watson and Pope have perpetrated upon it damages resulting from a loss and injury it has occasioned through its own fault.

"The plaintiff's recourse against property stricken by a ven-

dor's lien was just as efficacious against it in the hands of the receiver as it was in that of the marshal; and, had it made proper and seasonable application to the judge *a quo*, possibly he might have permitted the marshal to retain in his possession the property seized under the writ of attachment in the Circuit Court. However vain and nugatory such an effort may have proven, it was none the less its duty to have made the effort at least.

"Surely the receiver cannot be said to have committed a wrong or trespass upon the plaintiff's rights by advertising and making a sale of corporate assets in pursuance of an order of court to pay debts, especially when such sale was neither enjoined nor opposed by it.

"Presumably the proceeds of the sale are yet in the hands of the receiver for distribution according to law, and plaintiff can exercise its rights thereon.

"In our opinion, this is not a case in which we are called upon to examine and scrutinize the legality of the appointment of a receiver, for the reason that the complaining creditor has not suffered any injury thereby and is itself seeking a preference.

"We think the ends of justice would be best subserved by preserving and maintaining the *status quo*."

The assignments of error are somewhat involved in statement, but they are based on the ground that the order appointing Watson receiver was null and void because the ownership of property of the Louisiana Printing and Publishing Company, the debtor of plaintiff, "could not be divested to the prejudice of creditors on an arbitrary order without due process of law," and the use of such order to obtain the ruling of the United States Circuit Court, which directed the United States marshal to restore to him the property attached, deprived the plaintiff in error of a right without due process of law, and that therefore the judgment of the lower court was erroneous.

The appointment of a receiver to take possession of the property of an insolvent corporation upon the petition of a creditor is certainly "due process." This, of course, is not denied, but

the invalidity of the order of appointment is asserted because it was made *ex parte*, and because Watson had not fully qualified. It is hence argued that the appointment was a nullity — constituted "no legal obstacle" to the proceedings in the United States Circuit Court.

This view was not entertained by that court, but, on motion of Watson, the court ordered the property which had been attached restored to him and remitted the plaintiff (plaintiff in error here) to the state court. Its order was "that the marshal restore the property seized in this court under the writs of attachment and sequestration to John W. Watson, receiver, unless within five days the plaintiff applies for and ultimately receives authority from the civil district court which appointed Watson or from the appellate court to hold same under said writs." If this was error its review cannot be had on this record.

The plaintiff did not apply to "the civil district court which appointed Watson," the Supreme Court in its opinion says, but brought an action for nullity of the order of appointment under the code of the State (Code of Practice of Louisiana, Art. 604 *et seq.*) and for damages.

The action was regularly proceeded with, and was determined against plaintiff in error on grounds which did not involve Federal questions, and therefore it is not within our power to review the judgment of the Supreme Court of the State.

The plaintiff in error thus sought in the state court, and was given opportunity, to ligitate the rights claimed by it, and it cannot complain that the guarantees of the Constitution of the United States were denied because the litigation did not result successfully. *Central Land Co.* v. *Laidley*, 159 U. S. 103, 112; *Walker* v. *Sauvinet*, 92 U. S. 90; *Head* v. *Amoskeag Manufacturing Co.*, 113 U. S. 9, 26; *Morley* v. *Lake Shore &c. Railway Co.*, 146 U. S. 162, 171; *Bergmann* v. *Backer*, 157 U. S. 655.

It follows that this writ of error cannot be maintained.

The rule was announced in *Eustis* v. *Bolles*, 150 U. S. 361, 370, "that when we find it unnecessary to decide any Federal

question, and when the state court has based its decision on a local or state question, our logical course is to dismiss the writ of error." See also *Fort Smith Railway* v. *Merriam*, 156 U. S. 478; *Hamblin* v. *Western Land Co.*, 147 U. S. 531; *Castillo* v. *McConnico*, 168 U. S. 674.

Writ of error dismissed.

MR. JUSTICE WHITE took no part in this decision.